Public Utilities

FORTNIGHTLY

September 25, 1947

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PUBLISHERS

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Pages with the Editors

SHORTLY after this issue goes into circulation, the American Transit Association will be meeting in Atlantic City for its annual convention, October 8th to 10th. About the same time the independent telephone companies will be celebrating their golden jubilee, marking the fiftieth year of their existence as an organized industry. This will come with the national convention of the United States Independent Telephone Association in Chicago, October 14th to 16th.

STILL another great utility industry will be holding its national convention on October 6th to 9th when the American Gas Association meets in Cleveland, Ohio. Naturally, the almost simultaneous occurrence of these three meetings makes it somewhat difficult for a publication such as PUBLIC UTILITIES FORTNIGHTLY to mark the occasion appropriately for all three in the same issue. For that reason we have set aside our next (October 9th) issue for honoring the gas industry, while in this issue we are presenting articles of special interest to the transit and independent telephone industries.

IN the first category is the opening article dealing with the timely question of whether the Taft-Hartley Act is applicable to particular transit company operations. The author of this analysis is a new contributor to this publication. He is PHILIP B. WILLAUER, legal counsel for the Philadelphia transportation engineers' firm of Simpson and Curtin. MR. WILLAUER is a graduate of Ursinus College and also holds degrees from Clark University, University of Pennsylvania, and Temple University. He has been practicing law in Philadelphia since 1937, except for a 2-year period of military service in the naval reserve, from which he was discharged with the rank of Lieutenant. He has specialized in labor law and labor relations, and is a former member of the committee on labor and industry of the Pennsylvania Bar Association.

E. C. BLOMEYER

ANOTHER article of interest to transit companies, in this day of skyrocketing operating costs, is the description of how one transit company in a great metropolitan city was able to obtain a prompt and necessary increase of fares with a minimum amount of opposition. This was done through an intelligent and carefully planned publicity campaign, designed to acquaint the company's customers with the company's circumstances. The success of this campaign, which resulted in an actual increase of public sympathy and good will towards the company in a rather difficult economic situation, is a tribute to the

company officials and staff members who laid out and followed through the fare increase publicity plan.

E. C. GIDDINGS, author of this article on transit fare publicity, beginning page 425, was born and raised in Brooklyn, New York. He started a newspaper career as a cub reporter on the old *Brooklyn Standard Union* and later joined the staff of the *New York World*, and subsequently the *New York Journal*. He got into the transit business shortly before the New York subways were sold to the city. In 1939 when the Brooklyn-Manhattan Transit Corporation agreed to sell its operating properties, MR. GIDDINGS was an active negotiator and public relations counsel. He came to the Capital Transit Company in Washington, D. C., November, 1942, and is now vice president of that organization in charge of public relations.

HIS interest in this work, however, spreads beyond his own company's operations. He is an active member of the public relations committee of the American Transit Association, chairman of public relations of the YMCA of Washington, and director of public relations for District 22 of the Lions Club.

* * * *

WE are indebted to a rather unusual source for the historical frontispiece in this issue, showing the first electric streetcar in the city of Baltimore. We noticed this picture as one of a group of historical illustrations used in connection with an advertising series for Western Maryland Dairy. The nostalgic flavor of the 1880's is certainly captured in this series of scenes in and about the quaint city of white steps. The streetcar has come a long way since the brightly painted rickety little coaches shown in the frontispiece (released to us through the courtesy of Western Maryland Dairy and McKee & Albright, Inc.).

* * * *

SINCE 1904, when he first entered the telephone business in Missouri, E. C. BLOMEYER has been one of the most active and influential figures in the growth and development of independent telephony. In the early years of his career,

E. C. GIDDINGS

as operating executive, he was highly influential in the adoption of sound administrative methods among operating companies, and became a recognized leader in the shaping of policies in the industry.

IN 1912, MR. BLOMEYER went to Waco, Texas, to become vice president and later president of the Brazos Valley Telephone & Telegraph Company. He joined the Theodore N. Gary organization when it acquired the Texas properties. In 1920, he became vice president of Automatic Electric Company, Chicago, and four years later went to Kansas City as vice president of Theodore Gary & Company. He conducted the negotiations for the acquisition of most of the telephone properties which now comprise the Gary group, and for a number of years was the group's executive officer. For the past several years he has made his headquarters and residence in Chicago, and now serves as officer and/or director of a number of the Gary group companies. He is the author and publicist of a considerable number of contributions to the literature of telephone company administration.

THE next number of this magazine will be out October 9th.

The Editors

In This Issue

In Feature Articles

In Washington and the Utilities

In Exchange Calls and Gossip

In Financial News

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 129–160, from 69 PUR NS

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—MONTAIGNE

EDITORIAL STATEMENT
The New York Sun.

"Arrival of the world at the atomic age has not changed in the slightest degree the elementary fact that a strong voice carries furthest when it emanates from a strong body."

EDWARD L. BERNAYS
Public relations counsel.

". . . the function of government in industrial relations should be to develop good will and encourage harmony. Government in the rôle of umpire should be fair and just, informed and intelligent, and unprejudiced toward either side."

JOHN R. DUNNING
Professor, Columbia University.

"We have seen the destructive use of atomic energy and now we must explore into its constructive use. The public should understand that the substitution of atomic power for conventional power is not yet just around the corner."

EDITORIAL STATEMENT
Chicago Journal of Commerce.

"If this country is too weak to permit the existence of thoughts which the majority does not like, it doesn't deserve to survive. But it is another matter entirely to keep subversive individuals on the public payroll. That much is just plain, common sense."

G. METZMAN
President, New York Central System.

"To keep step with the public utilities and other industries, the railroads should have an increase in the return on their capital investment. Their job is just as essential to the economy and welfare of the country and they, too, are entitled to a 'living wage.'"

WILLIAM HENRY CHAMBERLIN
Columnist, The Wall Street Journal.

"The sorry state of western civilization in this year 1947 is closely associated with a moral and psychological phenomenon that is likely to seem more significant, in the long run, than any single atrocity or catastrophe of war and dictatorship. This is man's loss of faith in himself."

HAROLD E. STASSEN
Former governor of Minnesota.

". . . I am convinced that we can work out broad regulations and careful rules within which the dynamics of a private capitalism should operate. It would be a tragic mistake to turn toward governmental ownership or Socialism or planned economy, or however you wish to label the opposite trends."

E. M. VOORHEES
Chairman, finance committee, U. S. Steel Corporation.

"Taxes shift the capacity to buy things from taxpayers to the recipients of government disbursements, but in and by themselves taxes are neither inflationary nor deflationary. Tax consequences to the community are more to be sought in terms of their influence upon incentives to produce than upon prices."

JOHN W. BUCH
U. S. Bureau of Mines.

"We read of atomic power plants which will compete with coal at $7 or $10 a ton. But it is safe to predict that when electric power, generated by an atomic pile, is available at the average cost of coal to utility plants, coal will still be in full demand, whether it is for electricity, heat, or liquid hydrocarbons."

ALFRED P. SLOAN, JR.
Chairman, General Motors Corporation.

"Figuratively speaking, it is the cash register of the country reflecting hundreds of millions of transactions that validates wages, prices, and business volume and justifies profits in a free, competitive economy. And the more interferences are kept out, the sooner the essential adjustments will be accomplished."

BERNARD M. BARUCH
Financier.

"The process of individual effort which we call the capitalistic system may not be the ultimate but it is the best thus far devised. I believe in trying to better that system instead of tearing it down—of repairing that which has carried us so far instead of abandoning it and striking out afoot in new directions."

Excerpt from "New England Letter," published by The First National Bank of Boston.

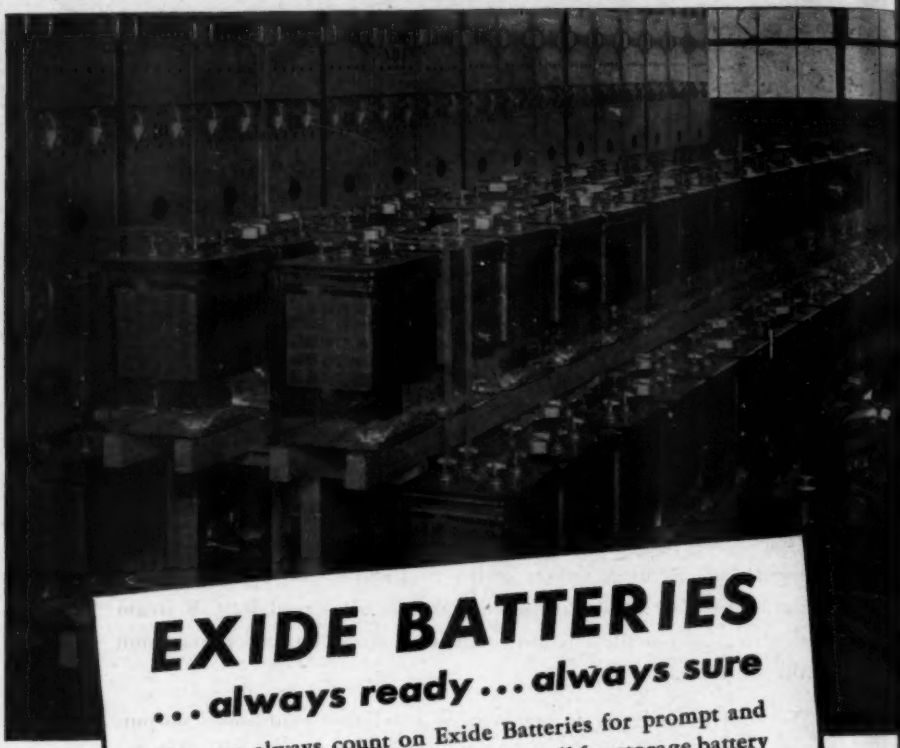
"In practically all of the social betterment plans that are being advocated, emphasis is placed upon generous slices of the cake instead of upon making a larger cake. When commitments are made beyond economic capacity, national security is undermined and the hand-out system degenerates into a distribution of poverty."

ROBERT R. WASON
Chairman, National Association of Manufacturers.

"Under a planned economy, Russian, German, or British, without hope of gain, the farmer tills less diligently, the miner toils without hope, industry produces less goods, the enterpriser banks the fires of ambition, the investor withholds his funds, jobs are fewer, there is less wealth to divide, the standard of living falls, people become serfs of the state."

EDITORIAL STATEMENT
The Wall Street Journal.

"The danger that this country will drift into some form of totalitarianism arises, we suggest, not from communists but from those people who would compromise with Communism, who would have us believe that there is some halfway house to freedom, that men in their economic life can be subject to some conscious control, centrally administered, and still remain freemen in charge of their own personality."



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Exide Batteries of Canada, Limited, Toronto

Utilities Almanack

September

25	Th	¶ *Wisconsin Utilities Association, Accounting Section, begins convention, Lake Delton, Wis., 1947.*
26	F	¶ *Porcelain Enamel Institute will hold annual meeting, Cleveland Ohio, Oct. 10, 11, 1947.*
27	Sa	¶ *United States Independent Telephone Association will hold annual convention, Chicago, Ill., Oct. 14–16, 1947.*
28	S	¶ *Texas Mid-Continent Oil and Gas Association will hold meeting San Antonio, Tex., Oct. 16, 17, 1947.*
29	M	¶ *National Metal Congress and Exposition will hold meeting, Chicago, Ill., Oct. 20–24, 1947.*
30	Tu	¶ *American Water Works Association, Ohio, Section, begins meeting, Columbus, Ohio, 1947.*

October

1	W	¶ *South Dakota Telephone Association begins convention, Sioux Falls, S. D., 1947.*
2	Th	¶ *Mortgage Bankers Association of America begins convention, Cleveland, Ohio, 1947.*
3	F	¶ *Association of American Railroads, Communications Section, will hold convention, Miami Beach, Fla., Oct. 21–23, 1947.*
4	Sa	¶ *American Water Works Association, Wisconsin Section, will hold meeting, Milwaukee, Wis., Oct. 23–25, 1947.*
5	S	¶ *American Public Works Association begins annual conference, Jacksonville, Fla., 1947.*
6	M	¶ *American Gas Association begins annual convention, Cleveland, Ohio, 1947.* ¶ *National Safety Congress and Exposition, begins, Chicago, Ill., 1947.*
7	Tu	¶ *National Farm Electrification Conference begins, Indianapolis, Ind., 1947.*
8	W	¶ *American Transit Association begins annual convention, Atlantic City, N. J., 1947.*

Courtesy, Western Maryland Dairy *McKee & Albright, Inc.*

Baltimore's First Electric Streetcar—1885

Public Utilities
FORTNIGHTLY

VOL. XL, No. 7 SEPTEMBER 25, 1947

The Taft-Hartley Act's Bearing on Transit Operation

Many transit operations are obviously not in interstate commerce, but it is not so simple a matter, declares the author, to decide whether or not operations of a particular transit company affect interstate commerce so as to make the new Federal labor law applicable. A transit utility may be intrastate commerce for rate regulation and interstate for labor regulation.

BY PHILIP B. WILLAUER*

UNION attitude toward the Taft-Hartley or National Labor Relations Act of 1947 ranges from outright hostility to passive acceptance. Until this initial reaction changes, it must be expected that unions will seek to avoid the new law whenever such avoidance is lawfully possible. There are several alternatives open to the unions and it is already clear that these alternatives are being pursued by the unions to the fullest extent allowable under existing law.

Perhaps the most publicized, as a result of the recently negotiated contracts between the coal operators and John L. Lewis and between the Ford Motor Company and UAW, is the procuring of contracts limiting union liability under the new law. But there are other alternatives. Heretofore, unions have been quick to invoke the assistance of the National Labor Relations Board in obtaining recognition and in processing grievances involving possible unfair labor practices. The

*For personal note, see "Pages with the Editors."

unions have made it clear that they will be slow to seek the aid of the board under the new law. Obviously, this means an increased reliance upon negotiation by unions as a means of obtaining recognition, settling grievances, and procuring contracts limiting union liability.

The attainment of union objectives can and will be sought, when negotiation fails, by increased resort to economic pressure in the way of strike threats, withdrawal of union coöperation, slowdowns, and actual strikes within the limitations permitted by the new law. In states where less onerous labor relations laws are effective, an increasing resort by unions to the assistance of such laws and the state agencies administering them must be expected.

A greater dependence upon negotiation in pressing union objectives is desirable and should be welcomed by management. Resort to strikes and to state labor relations agencies, however, will pose for the transit industry a particularly difficult problem. While the industry has been expressly exempted from the Fair Labor Standards Act of 1938, no such exemption has been provided in the case of the Wagner Act or its successor, the new Taft-Hartley Act. Any industry or employer engaged "in" interstate commerce or whose operations "affect" interstate commerce comes under the National Labor Relations law and must conform to its provisions.

MANY, perhaps most, transit operations are obviously not "in" interstate commerce. But it is not so simple a matter to decide whether or not the operations of a particular transit property "affect" interstate commerce. Yet, this is exactly what many transit properties will have to determine in the months immediately ahead. This decision will be forced upon management by union insistence that the particular transit property is engaged in a purely local activity and that, therefore, the Taft-Hartley Act does not apply. If the new law does not apply it will, of course, be unnecessary for the union to surrender the closed shop in the few instances in the transit industry where it has obtained such type of union security, or to conform to the requirements of the new law in continuing or procuring such union security provisions as the union shop or maintenance of membership. Many additional limitations upon union freedom of action will similarly be avoided, in the absence of any restrictive state legislation.

It must be anticipated that union insistence upon the inapplicability of the new law will be greater where the probability exists that such union contention may be well founded. Management rejection of the union's position will in the circumstances be deemed especially provocative. Neither the traditional policy of the industry favoring resort to arbitration nor the recently enacted state laws [1] governing settlement of labor disputes in the public utility industry may suffice in such case to avoid a strike or other curtailment of work. Transit management must consequently be prepared to face this issue, to act on it intelligently, and to discuss it with the union representatives when made an issue.

SECTION 2 (6) of the Taft-Hartley Act defines commerce as "trade,

traffic, commerce, transportation, or communication among the several states." A transit operation which carries passengers over its regular routes between two or more states is obviously engaged "in" interstate commerce. Thus, a company regularly operating busses between points in the District of Columbia and Virginia, and occasionally to a race track in Maryland, is engaged in interstate commerce and subject to the National Labor Relations Act.[2] The same is true of a company operating a bus service between contiguous cities located in different states.[3]

Section 2 (7) of the Taft-Hartley Act defines "affecting commerce" as meaning "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." In applying the similar language of the Wagner Act to a large transit operation[4] the court stated[5]:

> The test of the board's jurisdiction under the act is, not whether the operations of the company constitute interstate commerce, but whether a stoppage of its operations by threatened industrial strife would result in substantial interruption to or interference with the free flow of such commerce. . . . The purpose of Congress to extend the operation of the act, to cover any business whose interruption by labor disputes would interfere with interstate commerce, is perfectly clear.

Subsequently, the court quotes[5a] language used by the United States Supreme Court in another case as follows: ". . . even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress *if it exercises a substantial economic effect on interstate commerce.*" In holding that the company's operations affected interstate commerce, the court further declared[6]:

> We can take judicial notice of the fact that Baltimore is in size the seventh city of the United States; that it is a large city in a small state; that its industry is largely engaged in the production of goods for and the transportation of goods in interstate commerce; that the proper functioning of the industrial life of such a city is dependent to a large extent upon the transportation furnished by its streetcars and busses; and that a tie-up of this means of transportation would in large measure paralyze the life of the city and greatly hinder and impede the flow of the interstate commerce in which the people of the city are engaged.

EMPHASIS is placed upon the dependence by industries producing goods for interstate commerce on the transit facilities of the community. Absence of any such dependence may produce a different decision. Thus, the operations of a Chicago bus company were held by NLRB not to "affect" interstate commerce when the company carried less than 7 per cent of the total passenger traffic in the Chicago metro-

¶ "THE *attainment of union objectives can and will be sought, when negotiation fails, by increased resort to economic pressure in the way of strike threats, withdrawal of union cooperation, slowdowns, and actual strikes within the limitations permitted by the new law. In states where less onerous labor relations laws are effective, an increasing resort by unions to the assistance of such laws and the state agencies administering them must be expected.*"

politan area and its routes to industrial areas were in direct competition with routes of other transit companies.[7] On the other hand, another company which carried approximately 76 per cent of the total passengers in the Chicago area and supplied the most extensive transit service, conceded that it was subject to the National Labor Relations Act and was held by NLRB to be subject to its jurisdiction.[8]

There are a number of transit operations which, though primarily local in character, regularly carry passengers back and forth across state lines over established routes. These companies, whether small or large, are engaged in interstate commerce, must conform to the provisions of the National Labor Relations law, and are subject to NLRB jurisdiction. There are dominant transit companies which supply the major transportation needs of large metropolitan areas within which substantial industrial and business operations are conducted. The transit services of these companies, though confined to such metropolitan area wholly within a single state, "affect" interstate commerce since curtailment of such services as the result of a labor dispute would have an immediate and substantial effect upon the business and industrial activity within the area. Consequently, these companies, too, must conform to the National Labor Relations law and are subject to NLRB jurisdiction.

WITHIN the transit industry there are small properties operating wholly within a single state which service rural areas, small urban communities, or a large urban center in competition with one or more dominant properties handling the major passenger traffic in such large center. These transit properties are not engaged in interstate commerce nor do their operations affect interstate commerce. Consequently, these companies are not under the Taft-Hartley Act and are not subject to the jurisdiction of NLRB. They are subject, however, to any state labor relations law which may have been enacted by the legislature of that state.

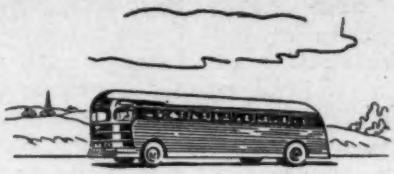
The great majority of transit companies within the industry do not fall within the above classifications. They are still faced with the very real and practical question whether the provisions of the recently enacted Taft-Hartley Act are applicable to their properties. Union insistence that the law is not applicable has already made this matter a very live issue on some properties.

Tests Applied by the Courts And NLRB

THE question as to whether a particular transit operation affects interstate commerce, thereby requiring conformity to the National Labor Relations Act of 1947, is not easily answered. Each individual transit company presents a separate problem which must be considered in the light of the facts pertaining to its operations. Previous decisions of NLRB, and to a lesser extent of the courts, have developed certain tests:

1. Does the transit operation handle the major burden of supplying public transportation service in the community?

2. Does the transit operation furnish transportation service to and from industrial plants engaged in the production of goods for interstate commerce?



Transit Operations in Interstate Commerce

"MANY . . . transit operations are obviously not 'in' interstate commerce. But it is not so simple a matter to decide whether or not the operations of a particular transit property 'affect' interstate commerce. Yet, this is exactly what many transit properties will have to determine in the months immediately ahead. This decision will be forced upon management by union insistence that the particular transit property is engaged in a purely local activity and that, therefore, the Taft-Hartley Act does not apply."

3. Does the transit operation form a link with interstate railroad, bus, and air lines serving the community?

4. Is the transit operation a wholly owned subsidiary of, or affiliated in any manner with, a company engaged in interstate commerce?

5. Does the transit operation extend its service under contract with the U. S. Post Office Department to mail carriers transporting U. S. mail?

6. Does the transit operation provide interstate charter or special party service under certification of the Interstate Commerce Commission?

7. Does the transit operation require the purchase of supplies and equipment in substantial amount from outside the state in which it operates?

When a number of these questions are affirmatively answered in the case of a given transit operation, it is clear under the decisions that a tie-up of such operation due to a labor dispute would affect interstate commerce. Consequently, such operation comes within the scope of the National Labor Relations Act and is subject to the jurisdiction of NLRB.[9] The difficulty arises, however, in making such determination when some of the questions require a negative, others an affirmative, and still others a qualified answer. What weight is to be given the different tests?

It is not possible to weight each of these tests nor to rank each one in importance as compared to the others. The significance to be ascribed to each is a matter for determination by NLRB and ultimately the courts. The cases in which these tests have been applied to particular transit operations are still too few to permit of more than a tentative and rough evaluation.

Dominant Transit Properties

THE fact that the transportation needs of a community are wholly or largely supplied through the transit services of either a single or a dominant property would not in itself seem to be a decisive test. Such fact becomes

important only when the industrial and business activities within the community are so substantial that an interruption of transit services would affect interstate commerce by slowing down or halting such industrial and business activity. Obviously, this result would not be produced by a curtailment of service in small or medium-sized communities in which there was little or no industrial activity. This test in itself, therefore, appears to be of subsidiary importance.

Production of Goods for Interstate Commerce

THE presence in a community of industrial plants engaged in the production of goods for interstate commerce is another matter. Their presence raises the basic question as to whether a tie-up of transit facilities would cause such plants to shut down or curtail production. If so, a labor dispute in transit would "affect" interstate commerce by halting or slowing down the flow of goods produced by such plants into the channels of interstate commerce. Where a transit operation services a community in which such industrial plants are located, a number of questions are indicated. How many persons are employed by such industries; how do the employees travel to and from their work; what portion supply their own transportation; what portion use competing transportation facilities; and what portion use the facilities of the transit operation in question? The answers to these and similar questions will show the degree of dependence of the operations of such industrial plants upon the transit facilities of a particular company. If substantial dependence is shown, the transit operation will certainly be held by NLRB to "affect" interstate commerce and to be subject to the jurisdiction of NLRB.

The question then arises as to how far the courts may be expected to go in sustaining NLRB's finding that interstate commerce is "affected" in such a situation. Unfortunately, the industry has only one court decision to which it can turn for guidance, the Baltimore Transit Company Case referred to previously. In that case the NLRB found that the operations of the company affected interstate commerce and that it had jurisdiction to entertain a charge and issue a remedial order with respect to an unfair labor practice. The NLRB decision came before the circuit court upon petition of the NLRB to enforce its remedial order and petition by an independent union for a review.

The circuit court found that although "the vehicles of the company do not cross state lines," nevertheless the operations of the company did affect interstate commerce. The latter finding was based by the court upon the grounds that (1) "the vehicles of the company . . . carry to and from work thousands of passengers who are engaged in the production of goods that flow in interstate commerce"; (2) "the cars and busses of the company . . . carry persons traveling in interstate commerce to and from the stations and wharves of interstate carriers"; (3) "the cars and busses of the company . . . transport mail and newspapers moving in interstate commerce"; and (4) "the company brings into the state annually large quantities of materials and supplies" in connection with its transit operation.

AFTER setting forth these bases for its finding that interstate commerce was affected, the court indicated that its decision may have been affected by the broad interpretation of the commerce power of Congress by the courts in applying the Fair Labor Standards Act of 1938 and similar legislation. The court declared [10]:

> If Congress may regulate the labor relations of a clothing manufacturer . . . . the wages of an elevator operator in a loft building . . . . or the grain acreage of a farmer . . . . because of the effect these may have on interstate commerce, it would be absurd to say that its power does not extend to the labor relations of a street transportation company, upon whose operation the industrial life of a great city extensively engaged in interstate commerce is so largely dependent.

The circuit court accordingly affirmed the NLRB order with modifications not here relevant. The United States Supreme Court thereafter denied petition for certiorari, thereby indirectly approving the circuit court's decision though not necessarily every aspect of its reasoning.

Baltimore is a major East coast seaport through which foreign commerce flows in substantial tonnage. Notwithstanding this fact and the failure to obtain a full-dress hearing before the U. S. Supreme Court, it seems reasonably certain that any transit operation supplying the major part of the transportation needs of any metropolitan community will be held by the courts to be within the jurisdiction of NLRB and subject to the provisions of the National Labor Relations Act. It may reasonably be expected also that the courts will make the same ruling as to a transit operation providing the major transportation service in a moderate or medium-sized community containing substantial industrial areas devoted to the production of goods for interstate commerce. How much further the courts will go in finding that transit operations "affect" interstate commerce in communities where some industries are engaged in production of goods for interstate commerce cannot be foretold by analysis of the Baltimore Transit Company Case.

THE NLRB in its own decisions, however, has gone much further in applying this test. The Charleston Transit Company, an intracity and suburban bus operation, serves a population of approximately 120,000 persons in and about the capital city of West Virginia. In August, 1944, the NLRB ruled [11] that the operation affected interstate commerce since (1) roughly 15 per cent of the employees working in plants producing goods for interstate commerce were dependent upon the company's bus facilities, and

"A TRANSIT *operation which carries passengers over its regular routes between two or more states is obviously engaged 'in' interstate commerce. Thus, a company regularly operating busses between points in the District of Columbia and Virginia, and occasionally to a race track in Maryland, is engaged in interstate commerce and subject to the National Labor Relations Act.*"

(2) the company purchased substantial materials and supplies outside of West Virginia. In its opinion the board sets forth its findings (1) that 11 industrial companies located in the city limits employed approximately 10,888 persons of whom 16 per cent relied upon the bus operation for transportation to and from work, and (2) that 16 industrial companies located outside the city limits, but within the Charleston industrial area, employed approximately 9,566 persons of whom about 14 per cent relied upon the bus operation for transportation to and from their work.

The Menderson Bus Lines is the smaller of the two major transit companies which service a population of roughly 145,000 in and adjoining Phoenix, Arizona. In October, 1944, the NLRB, upon the same two grounds as in the Charleston Transit Company Case, determined that the operations of the Menderson Lines affected interstate commerce and subjected that property to the jurisdiction of NLRB.[12] The company is credited, in the decision handed down by NLRB, with transporting 26.7 per cent of all passengers using public transportation systems in the area. The board found that 49 industrial plants in the area were engaged in the production of goods for interstate commerce. These plants employed 12,712 persons of whom approximately 20 per cent relied upon the public transportation systems in the area to get to and from their places of employment. As the Menderson Lines carry only about one-quarter of the total transit passengers in the area, it seems clear its operations were relied on by very much less than 20 per cent of the persons so employed.

These two NLRB decisions did not come before the courts for review. Whether the courts will refuse to go as far as the board has gone in interpreting the term "affecting commerce" and applying it in the transit industry remains to be seen. Meanwhile, these decisions make it clear that the board would take jurisdiction over any transit operation whenever (1) some ten or twelve thousand persons in the community are employed in plants producing goods for interstate commerce, and (2) of the total so employed, two or three thousand are found to rely upon the local transportation system to go to and from their places of employment. There is, of course, no assurance that these rough figures represent minimum requirements. The board may well find in some future case that it has jurisdiction if as few as 10 per cent of the persons employed in plants producing goods for interstate commerce rely upon public transportation to get to and from their work.

There is an obvious limitation, however, on the board in that (1) reliance upon public transportation must be established, and (2) the reliance must attain the degree where an interruption of transit service as the result of a labor dispute would in fact impede or obstruct the flow of interstate commerce. If only several hundred out of several thousand employees would be affected it is difficult to believe that interstate commerce would be affected. In the first place, absence of such employees might well not perceptibly reduce production. Secondly, so few employees being involved the greater the likelihood that they could temporarily supply their own transporta-

Transit Operations over State Lines

"THERE are a number of transit operations which, though primarily local in character, regularly carry passengers back and forth across state lines over established routes. These companies, whether small or large, are engaged in interstate commerce, must conform to the provisions of the National Labor Relations law, and are subject to NLRB jurisdiction."

tion by use of their automobiles and car pooling. Finally, the question is also raised now as to the soundness of this test in those states which have recently outlawed strikes in the public utility industry. These laws in outlawing strikes would serve to guarantee uninterrupted service.

Transit Operations Linked to Interstate Companies

A TRANSIT operation will be held to be under the National Labor Relations Act and subject to the board's jurisdiction when (1) it forms a link with interstate railroad, bus, or air lines serving the community, or (2) it is operated by a company which is a subsidiary of, or in some form closely affiliated with, another company engaged in some type of interstate business. The two tests are frequently interrelated and for that reason may readily be considered together.

In the Baltimore Transit Company Case, the court included among the grounds for its decision the mere fact that the system carried "persons traveling in interstate commerce to and from the stations and wharves of interstate carriers." The board, too, guided no doubt by the court's opinion, has followed the same reasoning in at least one case.[13] There may be some validity to such reasoning when applied to large urban centers where persons in substantial number may be found daily completing or commencing interstate journeys. Even in such cases, however, accessibility to the stations and airports of interstate carriers is generally had via local taxicab services, and in the case of air carriers via transportation arranged for by the air carrier. It would seem clear, therefore, that generally much more is required to be shown than the mere fact that airports, railway, and bus stations of interstate carriers are accessible by way of one or more routes of the local transit system. In fact the board has ruled that a local transit operation is not engaged in, and does not affect, interstate commerce where by

arrangement both the local transit company and one or more interstate carriers issue suburban tickets to commuters good for passage over the lines of both within the state.[14]

THE operations of a local transit company do affect interstate commerce, however, where, by agreement with one or more interstate carriers, the company honors for passage over its routes tickets presented by passengers arriving from, or bound for, points outside of the state on the lines of such interstate carriers.[15] The same result follows when a local transit company and an interstate carrier company are operated as a single integrated enterprise under common managerial control.[16] Or where a public utility company engaged in the manufacture and interstate distribution of electrical energy also operates a local transit system.[17]

A somewhat similar situation arises where a local transit system is operated by a company which is a subsidiary of or affiliated with another company engaged in interstate commerce. Thus, the board has held that a local transit company was engaged in interstate commerce where the transit company was a wholly owned subsidiary of and had the same officers as the parent corporation which was engaged in interstate distribution of electricity.[18] As there were other factors present in the case, it is not possible to determine how decisive a rôle the intercompany relationship should be allotted in molding the decision reached by the board. In another case, however, the board ruled that a casualty company engaged in the business of insuring against public liability claims was not subject to the board's jurisdiction although it was a wholly owned subsidiary of a transit company whose operations the board believed "probably affect commerce within the meaning of the act sufficiently to warrant our assuming jurisdiction over its employees."[19]

THESE decisions, as well as sound logic, indicate the necessity of establishing some direct connection between the local transit operation and interstate commerce. This direct connection may be provided by (1) any agreement between a local transit operation and an interstate carrier which facilitates the use of local transit facilities by the passengers of the latter on their interstate journeys; (2) the operation of a local transit company and an interstate carrier under the same management; or (3) the operation of a transit system by a company which shares the same officers and is otherwise in close relationship as subsidiary or affiliate of another company engaged in interstate business. Without some such direct connection, the effect of a local transit operation upon interstate commerce is too remote to bring it within the jurisdiction of NLRB.[20]

On the other hand, if there exists such a direct relationship, the board has determined on at least one occasion that it has jurisdiction even though the actual amount of interstate commerce involved be quite insubstantial, and even though it decline to assume such jurisdiction.[21] The case involved a California bus company operating busses between San Francisco and Los Angeles. By agreement with three interstate bus carriers, tickets issued by such carriers to persons undertaking

interstate journeys were good for passage on the bus lines of the local California bus company. The board, in its decision, stated that of 68,762 passengers carried by the operation in 1944, only 756 or about one per cent were traveling interstate. Similarly, of 5,500 carried during the month of May, 1945, only 83 or about 1½ per cent were initiating or completing an interstate journey. The bus company functioned under certificate of public convenience issued by the California Railroad Commission. While the company was also registered with the Interstate Commerce Commission, it submitted no reports to that Federal agency. On these facts the board rejected the contention of an AFL union that the company was not subject to NLRB jurisdiction because of the insubstantial amount of interstate commerce involved. The board nevertheless decided it would not exercise such jurisdiction since "in view of insubstantial nature of the company's interstate business," the policies of the act would not be effectuated thereby.

Make Weight Tests—Transporting U. S. Mail

A FIFTH test which has been applied is whether the transit operation carries United States mail.[22] How decisive this factor would be standing alone is difficult to say. Generally, such activity is minor, and is readily dispensed with. It would seem unlikely, therefore, that either the board or the courts would consider this factor as decisive, standing alone. It is more in the nature of a "make weight" test which may assume a larger importance in doubtful cases when other tests fail to establish a clear decision.

Make Weight Tests—Interstate Charter Service

THIS test has not been specifically alluded to by either the board or the courts. Generally, it would seem to be properly classified with other "make weight" tests, assuming greater importance where the application of other criteria proves indecisive. It becomes a matter for consideration in each case, however, since any form of Interstate Commerce Commission registration or certification is accepted by the board as relevant evidence.[23]

More particular attention to this factor must be given by any transit operation which may have built up a substantial business in interstate charter service under ICC certification. If such service has become a fairly well-established phase of the company's business and produces revenue in very substantial amount or a substantial portion, let us say roughly 10 per cent, of total revenues, such fact may in itself result in a finding that the company is engaged in interstate commerce.

¶ "THE *question as to whether a particular transit operation affects interstate commerce, thereby requiring conformity to National Labor Relations Act of 1947, is not easily answered. Each individual transit company presents a separate problem which must be considered in the light of the facts pertaining to its operations.*"

Make Weight Tests—Purchase Of Supplies

THE court in the Baltimore Transit Company Case included among the reasons for its decision the fact that "the company brings into the state annually large quantities of materials and supplies." The court took pains to point out that in a single year the company had purchased 1,698,280 gallons of gasoline, 313,976 gallons of oil, both originally coming from outside the state, and used 138,381,291 kilowatt hours of electricity purchased from a producer obtaining in excess of 39 per cent of its total output from outside the state. The decisions of NLRB, following the pattern set by the court, are replete with statistics describing the amounts and dollar value of such purchases, including new equipment.

Notwithstanding the position taken by the same circuit court in the Baltimore Transit Company and Virginia Electric & Power Company cases and by the board in its decisions, this test is neither proper nor appropriate. Its application would quite obviously result in a holding that every bus operation affected interstate commerce except in the rare case of a company located in a state where oil was produced and refined and vehicles and repair parts manufactured. Even in such state a transit company which could be shown to have favored outstate producers and manufacturers in its purchases would be held by its operations to affect interstate commerce. The same would be true as to trolley operations. Only such transit company as was willing and able to purchase trolley equipment from a manufacturer in the same state and to power such equipment by electricity from an intrastate producer, would escape jurisdiction of the board, in the absence of any other fact placing the company under board jurisdiction.

SUCH a result is obviously absurd. The board has itself recognized this fact in refusing to base its decision on such factor in the Chicago Motor Coach Company Case, where it declared[24]:

> The company purchases its gasoline and certain other items from points outside the state. While the flow of such materials across state lines is a salient factor with respect to manufacturing and distributing industries which are engaged in the business of conveying or handling materials in the flow of interstate commerce, *this aspect of the case is only incidental to a business devoted entirely to transportation of passengers.* Should such a factor be given controlling weight it would be difficult to conceive of even the smallest bus line or taxi company which would be outside the scope of the act unless it appeared to be located in one of the petroleum producing states. (Italics supplied.)

Notwithstanding the board's critical and sound appraisal of this test in the Chicago Motor Coach Company Case, it is still retained by the board as one of the bases upon which the operations of a transit company may be found to affect interstate commerce.[25] Presumably in conformity to the statement made in that case, the test is no longer to "be given controlling weight" but is still to be used as a make weight factor.

WHILE such limited use of this test must be anticipated in future cases before NLRB, it is not likely to be sustained by the courts as a valid test. In the transit industry, equipment and supplies purchased are not a part of "the flow of commerce" within the

meaning of that term as defined and applied by the courts in cases involving other industries and transactions. Typical illustrations are afforded by milk distributors purchasing milk outside but selling it within the state, or meat distributors purchasing livestock outside the state and then slaughtering and selling the meat within the state. In such situations there exists a literal flow of the product from its source, across state lines, through processing plants, and into the hands of the ultimate consumer.

Obviously, in such cases the processor and distributor are an integral part of the very stream of commerce itself. A work stoppage at those points consequently has the direct and immediate effect of stopping the flow of such product. Clearly, therefore, it becomes a valid test of the processor's or distributor's relationship to commerce to inquire whether his product comes from outside the state or is destined in his hands for sale beyond the state borders. When applied to the transit industry, however, such test loses all meaning. If by any stretch of the imagination it be held to have any meaning, then all distinction between local and interstate commerce or industry will have been obliterated. Our courts certainly have given us no indication that they are prepared to go that far in modifying our traditional Federal-state dual system of government.

Make Weight Tests—Miscellaneous

THE board has on occasion applied additional tests in determining whether or not a transit operation affects interstate commerce. In one case,[86] for example, the board, in finding that the operation affected interstate commerce, pointed out that 43 per cent of the space leased on busses for advertising purposes was devoted to the advertisement of products sold nationally. Such a test reduces itself to an even greater absurdity than the question of the locality from which materials and supplies are purchased. Presumably, the theory is that a transit company is in the same category as an advertising agency operating on an interstate basis. Just as logically it could be said to be in the professional fund-raising business because it donates space for the promotion of community fund-raising campaigns. Or to be in the same category as a professional baseball club because of the donation or sale of display space for such purposes.

This test simply is not valid and cannot conceivably be sustained by the courts. The relationship of the lease of such space for the advertisement of products having a national distribution to interstate commerce is too remote and tenuous. Such reasoning has obviously been borrowed from court decisions interpreting the application of the Fair Labor Standards Act. As in so many other cases, having been taken from its original setting, it has no meaning or force in the new circumstances to which it is sought to be applied.

MORE validly the board has pointed to the fact that local transit operations frequently transport persons to and from war plants and military establishments.[87] This reasoning represents an effort to found NLRB jurisdiction upon the war powers of the national government. While no

doubt valid and of considerable practical effect during a period of war or state of wartime emergency, it can have no such expansive effect upon NLRB jurisdiction during peacetime. The mere accessibility via local transit routes to a Navy Yard, arsenal, government hospital, military post, or other installation is, therefore, irrelevant today. The sole test is whether jurisdiction is conferred upon NLRB by reason of the commerce power vested by law in the United States government.

Footnotes

[1] "Utility Antistrike Laws," by Roscoe Ames, PUBLIC UTILITIES FORTNIGHTLY, Vol. XL, No. 3, p. 163, July 31, 1947.

[2] *Re* Washington, V. & M. Coach Co. (1936) 1 NLRB 769; NLRB order enforced (1936) 85 F2d 990; affirmed (1937) 301 US 142, 81 L ed 965.

[3] *Re* Texarkana Bus Co. (1940) 26 NLRB 582; NLRB order modified and affirmed (1941) 119 F2d 480.

[4] *Re* Baltimore Transit Co. (1943) 47 NLRB 109; NLRB order modified and enforced (1944) 140 F2d 51; cert. denied (1944) 321 US 795, 88 L ed 1084.

[5] NLRB *v.* Baltimore Transit Co. (1944) 140 F2d 51, 54.

[5a] 140 F2d at p. 54.

[6] 140 F2d at p. 53.

[7] *Re* Chicago Motor Coach Co. (1945) 62 NLRB 890.

[8] *Re* Chicago Surface Lines (1944) 58 NLRB 1140.

[9] *Re* Wichita Transp. Corp. (1947) 73 NLRB No. 191.

[10] 140 F2d at p. 54.

[11] *Re* Charleston Transit Co. (1944) 57 NLRB 1164.

[12] *Re* Menderson Bus Lines (1944) 58 NLRB 820.

[13] *Re* Louisville R. Co. (1946) 69 NLRB 691.

[14] *Re* Chicago Motor Coach Co. (1945) 62 NLRB 890.

[15] *Re* Peerless Stages (1945) 62 NLRB 1514; *Re* Airline Bus Co. (1945) 64 NLRB 620.

[16] *Re* Turner Transp. Co. (1945) 60 NLRB 87.

[17] *Re* Virginia Electric & Power Co. (1940) 20 NLRB 911; NLRB order set aside (1940) 115 F2d 414, reversed and remanded on other grounds (1941) 314 US 469, 86 L ed 348.

[18] *Re* Spokane United Railways (1945) 60 NLRB 14.

[19] *Re* St. Louis Public Service Co. (1946) 65 NLRB 775.

[20] *Re* St. Louis Public Service Co. (1946) 65 NLRB 775; *Re* Chicago Motor Coach Co. (1945) 62 NLRB 890.

[21] *Re* Airline Bus Co. (1945) 64 NLRB 620.

[22] NLRB *v.* Baltimore Transit Co. (1944) 140 F2d 51; *Re* Wichita Transp. Corp. (1947) 73 NLRB No. 191.

[23] *Re* Trenton-Philadelphia Coach Co. (1938) 6 NLRB 112; *Re* Airline Bus Co. (1945) 64 NLRB 620.

[24] 62 NLRB 890, 893.

[25] *Re* Louisville Co. (1946) 69 NLRB 691; *Re* Wichita Transp. Corp. (1947) 73 NLRB No. 191.

[26] *Re* Spokane United Railways (1945) 60 NLRB 14. See also *Re* Louisville R. Co. (1946) 69 NLRB 691, 706.

[27] *Re* Spokane United Railways (1945) 60 NLRB 14; *Re* Peerless Stages (1945) 62 NLRB 1514; *Re* Louisville R. Co. (1946) 69 NLRB 691; *Re* Menderson Bus Lines (1944) 58 NLRB 820.

"IT seems very difficult for trade union people to grasp the close relation that exists between profits and employment. High profits are invariably accompanied by high employment. Not only do they ignore this, but there is no understanding of the way in which large profits cause business managements to expand, to project new capital expenditures, and to take on more employees. The capital outlays, in turn, provide millions of jobs in construction, in machinery manufacture, and in other durable goods activities."

— EDITORIAL STATEMENT
The Journal of Commerce.

Fifty Years of Independent Telephony

An analysis of the historical background of the independent telephone business which this year marks its fiftieth milestone as an organized industry.

By E. C. BLOMEYER *

THERE frequently arises the question of why, in a world in which the supplying of telephone service is a governmental or private monopoly in many important countries, there should be in the United States many ownerships and managements of telephone systems providing service to the public.

In this country, in addition to the some 7,500 telephone exchanges owned and operated in the great metropolitan areas and elsewhere by the 22 operating companies of the Bell telephone system, there are some 12,000 exchanges owned and operated by more than 6,000 separate telephone companies—commonly known as the "independents" — not owned or controlled by the Bell telephone system.

The answer to the why of this situation lies in the history of the telephone industry in the United States.

That answer discloses a most significant fact: That, of all the countries of the world, the greatest and most rapid development of the telephone has taken place in that country —the United States—in which there is the widest diversity of telephone ownerships and managements.

The independent segment of the telephone industry has been called the "unknown industry" because, at least until recent years, relatively few people outside the telephone business have known of its size and of its importance, past and present, to the telephone industry as a whole. Many people today do not know of its existence.

* For personal note, see "Pages with the Editors."

YET independent telephone companies were in operation even before the basic patent on the telephone transmitter, issued to Alexander Graham Bell in 1876, expired in 1893. (Bell's second important early patent, on the receiver, was issued in 1877 and expired in 1894.) There are in fact records of independent telephone companies operating as far back as 1889, some of which had been supplying service for several years before that time.

The independent telephone business is not, therefore, a fledgling industry. The important and highly constructive part it has played in the development of telephony in the United States is vividly portrayed in the history of the telephone industry in this country.

We shall attempt to sketch the high lights of that history, and to show the very good reasons for the coming of the independents, for their existence during those turbulent years of warfare between them and the early management of the Bell telephone system, and for their existence now.

The reasons for the coming and growth of the independents are not hard to analyze. If Mr. Bell had invented the washing machine or the electric fan or other device of like importance instead of the telephone, he and his associates could no doubt have introduced their product throughout the country in a more orderly way. They could have taken their time about extending their business, enlarging the scope and territory of their activities as the necessary capital, manufacturing facilities, and organization became available to them. They could have gone into the large cities first—as they naturally did with the telephone—letting the smaller towns and cities wait. Under such circumstances they could have controlled the situation for a long time and could have made their own terms and conditions for the use of their device. By the time their basic patents expired they would have had their product so well established and their method of doing business so firmly seated that competition would have been sporadic and of a nature to be dealt with fairly easily.

THE trouble with any such plan as this was that the telephone was not simply a gadget which made life a bit easier. It was a thing which changed ways of life. The moment it became possible, by the erection of some wires and the installation of some easily manufactured equipment, for persons to converse over considerable distance, new values were added to life, new customs were made possible, and new methods of doing things came into being.

The telephone was, in short, too important in the lives of many people to be left to the control of any one set of people. The whole country was unwilling to wait until Mr. Bell and his associates got around to supplying it with telephones. It wanted, and needed, its telephones now. It got them in very many cases from locally organized and locally owned companies—the independents.

At the time the Bell receiver patent expired early in 1894 the then Bell system had, principally in eastern cities, some 237,000 exchange subscribers. This was the growth that had been made by the Bell organization in eighteen years. Meanwhile the independent movement had progressed so rapidly that in the year 1894 a partial

roster of independent exchanges then in operation or under construction included 116 cities and towns in widely scattered parts of the country.

It is undeniable that the entrance of so many people into the telephone business greatly expedited the availability, growth, and use of the telephone in the United States. Chalk up one first good mark for the independents, therefore —they made the telephone available much more quickly to many more people than could possibly have been done by any one organization. It is partially the impact of that early rapid growth of the telephone that made and has kept this country the greatest user of telephone service of any country in the world.

It may well be that there should be chalked up to the credit of the independents another mark of great importance. It is very possible that the existence of independent telephone companies preserved the telephone business as a privately owned enterprise in this country.

In the late 1880's, just at the time the telephone was beginning to make its first important impress on the life of the nation, there was running throughout the country a high tide of feeling against private monopoly. A few monopolistic industries were riding the general public ruthlessly. This situation culminated in the enactment by the Congress, in 1890, of the Sherman Antitrust Act, which prohibited "monopolizing, attempting to monopolize, or combining or conspiring to monopolize, any part of trade or commerce."

This was before the days of governmental regulation of utilities. Under those circumstances, it hardly seems likely that a public service of such then potential importance as telephone communications would have been allowed to exist very long as a private monopoly.

It is therefore very likely that, if there had been no independent telephone companies at that time, the telephone would now be an adjunct of the Post Office Department in this country —just as it is now in other important countries of the world.

Another important mark — which we will discuss in more detail later— to the credit of the independents is the great value of the contributions to the art of telephony that have been made by independent manufacturers.

The independent telephone industry, as we have said, is not a fledgling business. It has now been in existence for some sixty years—a fairly long time in this relatively young country of ours. Its history during those years, in so far

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¶"In *this country, in addition to the some 7,500 telephone exchanges owned and operated in the great metropolitan areas and elsewhere by the 22 operating companies of the Bell telephone system, there are some 12,000 exchanges owned and operated by more than 6,000 separate telephone companies—commonly known as the 'independents'—not owned or controlled by the Bell telephone system.*"

as its relations with the Bell system are concerned, divides itself somewhat naturally into three principal phases or periods.

THE first of these was that era of bitter competition, constant hostility, and even, at times, actual physical warfare, between the then Bell companies and the independents. It was during this period that there sprang up in many cities and towns—some 1,300 of them, in fact—competing telephone exchanges, not interconnected, one Bell-owned, the other—the independent — usually locally owned.

During a considerable part of this period competition between independents and Bell was of a dog-eat-dog variety, with no holds barred. It included such amenities as a constant procession of litigation, threats against the competitor's subscribers, undercover deals for the purpose of putting the competitor out of business, rate cutting, and other unpleasant forms of commercial battle as it was fought in those days.

During the early part of this period an event transpired which has been of much greater significance to the telephone industry than perhaps even many telephone people realize. In May, 1897, a group of independent men met in Chicago and organized the National Telephone Association. The following month, June, 1897, the association held in Detroit its first convention, attended by some 400 independent telephone people.

This association and its successor national independent telephone associations profoundly changed the course of the telephone industry.

A national association offered a rallying ground for all the independents. Before the organization of the first association each independent company had carried on its own private fight with the Bell, which had the great advantage of presenting, on its part, a solid and unified front.

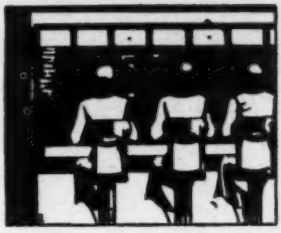
THE national association, which, with its successor national organizations, became more and more representative yearly of the entire independent industry, crystallized the aims of the independents, put organized strength behind them, and made them vocal on a country-wide basis.

Two issues became paramount. The Bell system was building up a large toll network; it would not connect with the independent companies, whose toll lines—where they existed at all—were local. Also, the Bell system was gobbling up independent companies at a rapid rate.

The independents created a committee of seven prominent and forceful men, who carried on long negotiations with the Bell system principals. The first result was the issuance, in January, 1912, of a statement by Theodore N. Vail, then president of the American Telephone and Telegraph Company, of Bell system policies with respect to independent companies.

These policies permitted, under certain conditions, the connection of Bell toll lines with noncompeting independent exchanges.

This expression of policy turned out to be more shadow than substance, so far as the independents were concerned. Little progress was made under it in bringing about actual Bell toll line connections with independent



First Commercial Automatic Exchange

"THE first commercial automatic exchange was installed in 1892, for an independent operating company. It was not until 1919 —twenty-seven years later—that the Bell system officially adopted the automatic telephone; the first Bell system automatic exchanges were manufactured by an independent manufacturer."

companies. Some of the Bell system operating companies were not disposed to go along with the policy; the contractual terms offered independents were in many cases unsatisfactory, and the whole proposition sort of bogged down as time went on.

BUT not quite two years after the issuance of the Vail policy statement there was an event which really meant something to the independents. This was the making on behalf of the Bell system in December, 1913, of the famous "Kingsbury commitment" to the Attorney General of the United States.

This act by the Bell system was a milestone in the history of the telephone industry.

The Kingsbury commitment, signed on behalf of the Bell system by American Telephone and Telegraph Company Vice President N. C. Kingsbury, was made necessary by a chain of events.

The American Company had recently acquired control of the Western Union Telegraph Company. It was aggressively opposing the establishment and existence of independent companies. It was, in short, displaying the characteristics of an organization determined to create and maintain a monopoly of communication services in this country.

The independents, through their associations and otherwise, were yelling to high heaven about their treatment by the Bell. The Postmaster General of the United States had taken a look at the situation and had recommended that the telephone be government owned. Prominent members of the congressional committees which would deal with the matter were said to be in favor of the idea. President Wilson had voiced his opposition to monopoly.

There was danger that at least long-distance telephone communications would be taken over by the government.

It was time for the Bell system to

change its policies, and it did that. The result was the Kingsbury commitment.

By this commitment the American Telephone and Telegraph Company assured the Attorney General that the Bell system would divest itself of its control of Western Union, would connect its toll lines, under certain conditions, with independent exchanges, and would refrain from acquiring competing independent properties if the United States Department of Justice or the Interstate Commerce Commission—which latter had been given Federal regulatory jurisdiction over telephone service—objected to such acquisition.

The Kingsbury commitment did not settle all the differences between independent and Bell companies. But it did provide a new and more solid basis for dealings between them. For that reason it can be considered as having opened the second phase of the history of the relations between independents and Bell.

This second phase was an era of mergers of competing telephone exchanges, of extension of the Bell system's toll network to nation-wide proportions (the first transcontinental toll line was opened in 1915), and of rapid growth of the entire telephone industry.

During this period the connection of Bell toll lines with noncompeting independent exchanges became a practical reality.

DURING it, also, most of the principal differences between independents and Bell were disposed of with an important exception. This was the unrestricted acquisition by Bell operating companies of independent properties or of substantial interests in or control of independent companies.

Frequently the independent companies so dealt with were the cream of the independent noncompeting crop in that territory. The result was a sapping of the strength of the independent group to an extent much greater than the numerical loss of telephones by the independent group would indicate.

Obviously this situation, if long continued, would in time reduce the independent segment of the telephone industry to a group of only its smallest and weakest companies. If the independent industry was to be preserved as a strong and virile institution, something had to be done. So the national independent telephone association, then the present United States Independent Telephone Association, took up the fight, assisted by a number of the state telephone associations that had by then been organized.

The result was the issuance on June 14, 1922—almost nine years after the Kingsbury commitment—of what became known as the "Hall memorandum." This was a letter from E. K. Hall, vice president of the American Company, to F. B. MacKinnon, president of the association.

The Hall memorandum stated it to be the policy of the Bell system "not to purchase or consolidate with connecting or duplicating companies except in special cases," and it provided that the association would thereafter "be given notice of any such proposed transaction at least thirty days before the parties conclude any formal agreement."

If, then, the association had objections to the transaction, it could make them to the regulatory bodies by which

the deal had to be approved, including the Interstate Commerce Commission, which at that time had the job of determining whether the acquisition or consolidation of competing properties was in the public interest.

At the October, 1922, national convention of the association, Mr. Hall made an address on "Bell-Independent Relations." (Significant of the change of the times was the fact that this was the first time in the history of telephony that a high Bell official had appeared at a national independent convention.) The keynote of Mr. Hall's address was expressed in his following statement:

"I say without any question or equivocation or hesitation that in our (Bell) judgment, it is to the interest of the two groups, it is in the interest of the industry, and is in the interest of the public that there should continue to be two strong powerful groups in the industry."

The importance of the Hall memorandum and Mr. Hall's speech was not so much in the exact words used in either, but in the fact that the Bell system had definitely and publicly committed itself to a policy of nonacquisition of independent properties except in cases of a special nature — of which there were some, as the independents themselves recognized — and to a policy of the maintenance of two strong groups in the industry.

During the twenty-five years that have passed since that time there has been a general cleaning up of the remaining competing exchange situations, with independents, in some cases, acquiring the opposition Bell exchange. Various special situations have been worked out in one way or another. In a few cases the independents have objected to proposed Bell acquisitions, generally resulting in the transaction not being completed.

In recent years most acquisitions by Bell companies have been of minor character, being usually distress situations of very small independent companies unable to meet the demands on them for service, and in cases where no other independent company was in position, for geographical or other reasons, to take over.

The Hall memorandum can be said to have initiated the third and present period in the relations between independent and Bell companies. The smoke and heat of the old-time battles have long since blown away. Differences between the two groups are now settled around the council table, in peace and amity.

¶ *". . . the independent segment of the telephone industry is in the aggregate no small business. According to statistics of the United States Independent Telephone Association, at the end of 1946 companies not owned or controlled by the Bell telephone system had some $760,000,000 of telephone plant, and their gross revenue for 1946 was more than $200,000,000. These 6,000 companies owned and operated, at the end of 1946, about 12,000 exchanges, with some 5,950,000 telephones."*

PRESENT relations between the two groups, however, cover much more territory than the adjustment of the relatively few differences between them —differences which are usually no more than questions of the type that naturally arise, in the ordinary course of business, between diversities of ownership. During the years that have elapsed since the presentation of the Hall memorandum there has come about a species of coöperation between the two groups in the telephone industry that has been helpful to both groups, and which is based upon due recognition by each group of the integral position of the other in the telephone industry in this country.

The existence of two separate groups in the industry is recognized, as well, by governmental agencies, regulatory bodies, and the like. Both independent and Bell members are accorded places on important government and other committees dealing with matters affecting the telephone industry as a whole—such as the Industry Advisory Committee of the late War Production Board. And, within the industry itself, committees are formed of both independent and Bell representatives for dealing with industry-wide matters of various kinds.

Such propositions as, for illustration, the integration into telephony of suitable wartime developments in communications are recognized by both groups as matters of industry-wide importance requiring industry-wide coöperation. Another case in point is the desire of the telephone industry as a whole to bring about nation-wide extension of farm telephone service. In this latter case Bell developments with respect to the use of power lines for rural telephone service have been made available, license-free, to independent companies.

It can, therefore, we think, be correctly said that there now exists in the telephone industry in this country, regardless of its diversity of ownerships, an element of solidarity which has as its principal aim supplying the country with the best possible telephone service.

There is an element in the history and development of the telephone which, even standing alone, amply justifies the existence through the years and now of independent telephony. This is the value, in the development of the art, of the many important contributions made to telephony by independent telephone manufacturers.

SINCE independent telephone companies could not, in the early days, obtain Bell telephone equipment, there could of course have been no beginning of the independent telephone industry if there had not been somebody to manufacture telephone equipment for the independent companies. And there was somebody to do the manufacturing, even before the expiration of the two first Bell patents in 1893 and 1894—a number of manufacturers who made and sold telephone equipment and telephones of their own design, to the accompaniment of a constant barrage of infringement suits and other patent litigation.

Great impetus was given to independent manufacturing by the expiration of the two Bell patents; also by the nullification by the courts, in 1895, of a transmitter patent granted Emil Berliner, acquired by the Bell and which, if valid, would have extended the Bell patent monopoly for a number of years.

Independent Telephone Industry A Going Concern

"THE independent telephone industry is very much a going concern. It has its own manufacturing facilities, with highly effective laboratory and development organizations. It has its own associations, national and state. It has its own very able trade press. It has its own organization of pioneers of the earlier days of independent telephony. The bonds of independent telephone companies of sufficient size to do public financing—securities which were once in the category of the proverbial 'drug on the market'—now find ready acceptance, at satisfactorily low interest rates . . ."

According to available records there were, at one time or another during the period from 1890 to about 1910, some 75 manufacturers of telephone equipment in the Chicago area alone.

With so many manufacturers throughout the country competing for the business of the growing independent operating companies, it was natural that new ideas and new developments of the telephone art came fast and furiously, just as technical progress occurs rapidly in any industry under competitive stimulus. The record of "firsts" in the development of the art by independent manufacturers is long and impressive.

The list includes such valuable contributions as the self-restoring switchboard drop, self-soldering heat coils, compact-type wall sets, divided circuit ringing, bridged bells, improved hookswitch assemblies, harmonic selective party tuned bells, ringing convertors, the "feature" manual switchboard, improved transmitters and receivers, and many other items of great value.

MOST important of all was the invention and development of the automatic telephone — the greatest basic change in the art of telephony since the birth of the telephone. It was for many years entirely an independent development.

The first commercial automatic exchange was installed in 1892, for an independent operating company. It was not until 1919 — twenty-seven years later—that the Bell system offi-

cially adopted the automatic telephone; the first Bell system automatic exchanges were manufactured by an independent manufacturer.

Before that time, 1919, automatic telephone systems were in operation at many and important independent exchanges in the United States, and also in Canada, England, New Zealand, Hawaii, Cuba, and other countries.

WITHOUT the independent manufacturers there could not have been, and would not be, any independent telephone companies. Also, without the independent manufacturers and operating companies, the telephone industry and art would likely now be many years behind its present size and development.

The facts show clearly that no one organization, however large, can think of and do everything. That is likely to be as true in the future as it has been in the past.

We have mentioned the importance, in the changing relations through the years between independent and Bell companies, of the independent telephone associations. Without them, beyond doubt, the course of telephony would have been profoundly changed and the independent telephone industry would probably now be something much less important than it is.

The National Telephone Association, the first independent organization intended to be of country-wide scope, was organized in 1897, fifty years ago. In January, 1902, another association was formed, specifically for the purpose of representing independent telephony, both operating and manufacturing, in Illinois and adjoining states. This organization was named "Interstate Independent Telephone Association of America."

In 1904 the first association changed its name to "National Independent Telephone Association." This organization and the Interstate association were merged in 1905, under the name "National Interstate Telephone Association." In 1906 independent telephone companies in Canada were made eligible for membership, and the name was changed to "International Independent Telephone Association of America."

THIS name apparently turned out to be too much of a mouthful, since, in 1909, it was changed back to an earlier name, "National Independent Telephone Association."

Differences arose within the association with respect to qualifications for membership—a backwash, of course, of the fight with the Bell. So, in 1913, a group of members withdrew from the national association and formed "The Independent Telephone Association of America."

The differences were not of long duration. In December, 1915, the two associations held a joint convention in Chicago and were merged into the present United States Independent Telephone Association.

This organization has, for the past thirty-two years, nationally represented the entire independent telephone industry, including as members both independent telephone operating companies and manufacturers. It will celebrate, at its coming "golden jubilee" convention to be held in Chicago in October, 1947, the fiftieth anniversary of the organization of a national independent telephone association.

It has, of course, been years since the principal objective of the association was to protect independents from Bell. The association's activities are now similar to those of other effective trade organizations that are national in scope; educational, informational, and having to do with legislative, regulatory, and other matters of national importance to the industry it serves. It continues, as for many years, to be the national clearing house for the exchange of ideas for the furtherance of the purposes and objectives of independent telephony.

In its work the association is ably assisted by the some 34 active state telephone associations.

The telephone was one of the basic inventions of all time. Upon it there has been built one of the great industries of the world. In the United States alone the investment in telephone plant at the end of 1946 was near $7,000,000,000, and gross revenues of the telephone industry in this country for 1946 were near $2,300,000,000.

RECENT and particularly postwar growth of telephones in service in the United States has been at a pace much faster than that of earlier days. At the time of the Kingsbury commitment, in 1913, there were some 9,500,000 telephones in this country. At the time of the Hall memorandum, in 1922, there were about 14,300,000. At the end of 1940 there were about 22,000,000. At the end of 1946 there were some 31,600,000. The number is now well past 32,000,000, and some millions of applicants are still waiting to be served when the necessary additional equipment and plant can be provided.

The Bell telephone system, operating in the great metropolitan areas of the country as well as in many other places, and with its vast nation-wide toll plant, has of course the bulk of the investment and revenue. Yet the independent segment of the telephone industry is in the aggregate no small business.

According to statistics of the United States Independent Telephone Association, at the end of 1946 companies not owned or controlled by the Bell telephone system had some $760,000,000 of telephone plant, and their gross revenue for 1946 was more than $200,000,000.

These 6,000 companies owned and operated, at the end of 1946, about 12,000 exchanges, with some 5,950,000 telephones.

Although most of the independent exchanges are small, operating in the small towns, villages, and rural sections of the country, there are 201 "class A" independent companies with annual revenues of more than $100,000 each—a number of them with revenues of a million dollars or more annually. There are also some 60 "class B" independent companies, with annual revenues of between $50,000 and $100,000.

Since about 1924 there has been taking place an accumulation of independent properties into groups of companies each under a single top ownership or control. A considerable number of such groups, of varying sizes, now exist. Approximately 2,000,000 independent telephones are now under the ownership of the 15 largest of these groups.

The actual geographical area served by independent companies—operating

to a considerable extent in the great agricultural sections of the country—is considerably larger than the combined area served by the Bell system associated companies.

The independent telephone industry is very much a going concern. It has its own manufacturing facilities, with highly effective laboratory and development organizations. It has its own associations, national and state. It has its own very able trade press. It has its own organization of pioneers of the earlier days of independent telephony.

The bonds of independent telephone companies of sufficient size to do public financing—securities which were once in the category of the proverbial "drug on the market"—now find ready acceptance, at satisfactorily low interest rates, by institutional as well as other investors. Preferred and common stocks of such companies are now considered prime investments by thousands of stockholders.

Independent telephone managements, alert to changes in the art arising from the rapid wartime and postwar developments in such fields as electronics and radio, are rapidly integrating into independent operations such new devices and classes of service as carrier current, mobile radiotelephones, telephone service over power lines, and so on.

THE great energy of the telephone industry is no longer expended in interindustry fighting. It is now used by both groups in the industry to extend and improve telephone service in the United States and to continue to maintain it as what it has always been—the best in the world.

The United States Independent Telephone Association can fittingly celebrate the fiftieth anniversary of the organization of a national independent telephone association in the knowledge, comforting to both groups in the telephone industry, that there is not and has never been a telephone monopoly in this country. Also, that there never will be one so long as the independents continue to exist. And that, according to indications, will be a long, long time.

Transit Facts

"THE *transit industry of the United States and Canada will spend over a half-billion dollars in 1947 on new equipment and in modernizing and rebuilding older vehicles, according to the American Transit Association.*

More than $171,000,000 will go for the purchase of new busses by the country's 1,500 transit companies, $17,000,000 will be for new streamlined trolley cars, and $14,000,000 for new trolley coaches. The total cost of new ways, structures, power, and lines will be $78,000,000.

An additional $230,000,000 will be spent on an expanded maintenance program of equipment and facilities, with almost $150,000,000 going for labor alone, and the balance for materials.

Last year, America's transit companies spent $45,700,000 for gasoline, $42,100,000 for electric power, $12,900,000 for coal, $3,630,000 for lubricants, and $2,770,000 for Diesel oil.

Gaining Public Acceptance For Needed Fare Increase

Here is how one large metropolitan transit company, faced with the necessity of increasing fares to offset increased operating expenses, set about preparing, systematically, its own customers for the petition to increase fares. A petition was subsequently filed and approved with a minimum of local opposition and a clearly registered understanding of the situation on the part of the public—thanks to an intelligent and planned advance program worthy of attention by other companies faced with similar conditions.

By E. C. GIDDINGS*
VICE PRESIDENT, CAPITAL TRANSIT COMPANY

In July, 1946, new wage rates left Capital Transit Company facing increasing costs. Deficits were a foregone conclusion. Higher costs per mile and more miles needed to meet normal standards were of immediate concern.

The circumstances would soon test the financial integrity of the company. The only solution was an increase in fare. The fare structure in July in the District of Columbia was $1.25 weekly pass; 3 tokens for 25 cents; 3-cent school ticket. The latter rate could only be changed by an act of Congress.

To change the fare structure it would be necessary to petition the public utilities commission, the local regulatory body, and present an airtight case—financially and statistically complete—to warrant a change. Before doing this public attitudes were of major concern inasmuch as Washington, whose people do not have any vote, is a city of small neighborhoods, each of which has its own pressure group. These groups, also banded into geographical and city-wide entities, hold meetings regularly and provide a steady flow of news to local dailies. In addition, they have their own media outlets. Their direct and indirect influences reflect popular attitudes.

The preparation of the financial and statistical detailed case, of course, was a necessity. It had to have its basis in experience. The best judgment in July was that the time for filing the petition would be in October or in November, subject to later developments.

*For personal note, see "Pages with the Editors."

The Problem

THE immediate problem in July was the "conditioning" of public attitudes to not only accept the current and prospective facts but also to neutralize organized objections when the application was finally made. Thus, it was reasoned, the company could present its case to the public utilities commission in a normal atmosphere where facts and not emotions or outside pressures would prevail. Three months was the outside time limit in which to do this. Yet, the plan of action had to be flexible to cover a longer period if circumstances permitted.

The Plan

The plan applied a technique based on an "offensive" plan of action rather than "defensive." Capital Transit's financial "troubles" were placed in the public's lap before they actually crystallized.

The "springboard" for the "conditioning" campaign was centered around space advertising in four metropolitan dailies. These ads were large enough so as not to be dominated by other ads yet not so large as to appear "extravagant." Other media—*Transit News* (a take-one); radio commercials; personal contacts; etc.—were to be supplemental until all doubt as to the date for filing the petition was removed. Then, emphasis was to be placed on personal contacts.

The theme of the campaign had its basis in the fact that the company was in business to make money — a fair and reasonable return on its investment. Financial stability, the direction in which the company was financially headed, and the cause of the critical conditions, were to be stressed. It was felt a frank current discussion would assert the leadership needed to establish a favorable public attitude. Better service or new vehicles were not promised.

Newspaper Advertising

THE first of the space advertising was scheduled for appearance about every three weeks, to be stepped up as the date for filing became fixed. The theme was to finally be exposed to the public continuously for about three weeks before the petition was actually filed.

As the tempo increased some public objections began to take form. This was expected (and welcomed) as it served as a "steam letting" process before the company had actually applied for relief.

The form of the campaign at this time literally left this question with the public: What would you do under the circumstances?

A definite feeling was also asserting itself through personal contacts: Why didn't the company ask for an increase if the facts were as stated?

No specifics had entered the theme up to this time. It was generalized but in such a manner as to relate the generalities to the problems of the individual seeing or hearing the message. The developments were encouraging but they also indicated that the "timing" was all important.

The space advertising paced the campaign. The direct statement that the company would have to ask for an increase in rates was first made in an ad appearing on November 22, 1946. Caricatures of a streetcar and bus (used on past occasions in advertising) were the means of making the "direct" statement "indirectly." From there on, the copy was directed toward the

Opening Ad in Capital Transit Company's Program

DID YOU KNOW THAT *Washington boasts the highest per capita income of any city in the country? And that Washington's transit employes now are among the highest paid in the entire U.S.A.?*

Something more to crow about

ADD NOW to Washington's high living standard this further bit of news: transit employes here get larger pay envelopes than almost anywhere else.

Recent arbitration awards and an added increase of 6c per hour just agreed upon and presented to the Wage Stabilization Board for approval put Capital Transit workers in this enviable wage "bracket". Since January, 1941, their base hourly rate has increased 52%.

This tremendous change is welcomed by them naturally, yet it presents problems to your transit company.

Since January, we have added almost 2 million vehicle miles to our service and plan to add 8 million more vehicle miles to bring your service to peacetime standards. The extra miles and additional routes necessary to achieve this goal mean greater expense with little if any increase in income.

With this combination of higher wage payments and increased expenditure for service, it becomes more and more difficult to make ends meet. We are anxious that you understand the situation. Surely you want transit service that is second to none . . . and transit workers who are well paid.

Capital Transit Co.

How Voteless Washingtonians Operate

". . . Washington, whose people do not have any vote, is a city of small neighborhoods, each of which has its own pressure group. These groups . . . hold meetings regularly and provide a steady flow of news to local dailies. In addition, they have their own media outlets. Their direct and indirect influences reflect popular attitudes."

necessity for the higher fares. It was deliberately positive.

The space advertising campaign was climaxed with a large 5-column ad which ran in all four dailies on the day on which the application was filed—January 17, 1947.

Publicity

Two days before the date on which the petition was filed, the newspaper reporters who regularly cover the public utilities commission proceedings were asked to a conference with the attorneys who were to handle the case. The reporters were each given copies of the mimeographed material and encouraged to ask questions. They were told, in confidence, when the filing would be made.

The resulting news stories and editorials were favorable; at their worst, neutral in the presentation of the facts. The presentation to organized groups followed the news "break" of the filing of the petition.

Group Meetings

The time element between the filing of the application and the date for public hearing left several days for the "home stretch" plans. Once the public hearings started, the company could no longer take its story directly to the public or to groups. In the intervening period a visual presentation of the high lights of the circumstances which led to the petition and the basis upon which a "fair and reasonable" return was determined was prepared especially for presentation to groups. The facts were also outlined in a mimeographed presentation. (The same as that given the newspaper people.)

The Result

The "steam letting" process developed by the dissemination of information prior to the filing for the increase had the effect of "detonating" criticism from the same sources after the filing occurred. In only one in-

Provocative Illustrations and Captions in Follow-up Series of Ads

Text material explaining the company's position (average 15 lines) appeared under each of the above illustrations.

stance did an organized neighborhood group pass a resolution protesting an increase prior to the actual filing. This group found itself finally in the company of communists. It was apparently embarrassed and did not follow through in hearings before the public utilities commission. Several associations passed resolutions favoring the increase without reservation. Others endorsed it in principle with exceptions as to detail. Some took no action but left it to the public utilities commission.

A representative of a group with city-wide representation quite voluntarily appeared on the witness stand and stated the company security holders were entitled to a guaranteed return greater than that asked by the company in its petition.

The radical opposition was discounted by the press and by the general public.

The Aftermath

BUT there was still work to do after the increase was granted. The public utilities commission issued its order granting the company's petition on Thursday, May 8th. The new rates were to be effective Sunday, May 11th. Tokens were to be eliminated. The company had only provided for redemption of tokens through its offices. This left the small token holder, after the increase, with the choice of redeeming his tokens only after a great deal of trouble. This aroused considerable resentment. The company quickly made arrangements with a drugstore chain, several department stores, and commercial and savings banks throughout the city to cash up to $3 worth of tokens. The financial limitation was placed on the redemptions because of internal circumstances. The company also announced that the public could mail its tokens to the company and the money value of the tokens and the postage would be refunded.

One of the newspapers picked up the idea of having the public mail tokens to the Children's hospital for its building fund. The company fell in with the idea quickly and said it would redeem the tokens from the hospital.

The situation developed by the invalidation of the tokens may well have led to a loss of the considerable good will engendered, but by quick action the general public accepted the circumstances with remarkable good grace.

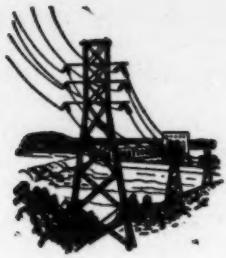
Let George Do It

"IF we really want to do something effective to save private enterprise then we must stop the 'Let George Do It' attitude toward legislative and public affairs. We need to take a real, a well-informed, a personal, and an active interest in this all-important subject of legislation if we are to preserve the system so essential to the future welfare of all our people.

"Industrial management must take an active interest in politics as a definite part of its program for the future. Just what do we mean by taking an interest in politics? My conclusion from some contacts with such matters is that the average business executive has been difficult to persuade to take action because he knew so little about either his representatives or the issues being discussed, that he just didn't know where to start. He rather hesitated to admit his ignorance or he 'pointed with pride' to the statement that he never took any interest or part in politics.

"Managements should appoint one or more executives to be the political contact men of their organization, and it should be their duty to obtain information on candidates for office, keep contact with the men in office, appear before legislative and governmental bodies when necessary, and then keep the rest of the organization in sufficient touch with political affairs."

—C. S. CRAIGMILE,
Executive vice president, Belden Manufacturing Company.



The English Grid System

Built as an economic project for peacetime needs, it is now being reinforced and the generating capacity associated with it extended.

By SIR JOHNSTONE WRIGHT
GENERAL MANAGER, BRITAIN'S CENTRAL ELECTRICITY BOARD

BRITAIN'S Central Electricity Board was set up, in 1926, by the Electricity (Supply) Act. I should like to tell something about that body and the work for which it has been responsible in the twenty years since it came into existence.

In the first place it should be understood that, although it was created by an act of Parliament, the Central Electricity Board is not a British government department. It is a body of the type now generally known as a "public corporation," and comprises a chairman who is required to give full time to his duties, and seven other members who give part-time services only.

The main duty laid upon the board was to coördinate the generation of electricity throughout the country and to create a pool of energy from which the local distributing authorities could draw their wholesale supplies. For these purposes it was required to construct a system of main transmission lines (commonly called "the grid"); to concentrate the generation of electricity at standard frequency in the most efficient stations (known as "selected stations"); to control the operation of the stations; to supply electricity in bulk on terms laid down in the act to municipalities and companies for distribution, and by these means to increase the availability of electricity and reduce the cost of production. Broadly described, these duties were progressively to rationalize the national production of electricity and the wholesale side of the business.

FOR the purpose of constructing the Grid, the country (excluding North Scotland) was divided into nine regional areas. For each area a scheme was prepared under which certain stations became selected stations, and provision was made for the technical layout of the Grid lines and transforming stations to interconnect the stations with one another and with the systems of the supply undertakers. The

schemes were so designed that each would eventually dovetail into the other to complete a national transmission system.

Construction of the Grid up to the end of 1946 cost, in round figures, about £40,000,000 ($160,000,000). It now comprises 5,161 miles of transmission lines, about 3,765 of which are operated at the high pressure of 132,000 volts, and the remainder at 66,000 and lower voltages. There are 348 switching and transforming stations having an aggregate transformer capacity of 13,920,200 kilovolt amperes. The number of selected stations associated with the Grid is 142, with an aggregate installed capacity of 11,315,931 kilowatts.

LET me make it clear that while the Grid itself—that is, the transmission lines and the substations—belongs to the board, the selected stations, with one exception, remain in the ownership of the municipalities and companies who provided them. The owner of each station, however, is under the obligation to operate his station at the board's instructions. Extensions of the stations, as may be necessary from time to time to meet the growth of load, are carried out by the owners according to directions issued by the board. Such extensions are planned to secure the best results for the country as a whole.

This comprehensive planning enables new plant to be put down on the best sites, and machines and boilers of large capacity, high efficiency, and low capital cost to be adopted. Whereas the average size of a complete generating station at the time the board was established was only about 10,000 kilowatts, the average size of the individual machines which are now being installed is over 40,000 kilowatts. Since most of the sites of the existing stations are becoming filled up, it has become increasingly necessary to provide the additional generating capacity required by building entirely new stations, and 18 new stations now at various stages of construction are due to be in commission by the winter of 1950.

ONE of the results of the Grid has been to afford an outlet for the limited water-power resources of the country and about a dozen hydroelectric stations are connected to the Grid. The output from these stations, however, amounts to only a little more than 3 per cent of all the electricity generated in Great Britain.

At the time the board was constituted, electricity for public supply, amounting to some 7,000,000,000 units (kilowatt hours) a year, was produced at approximately 500 generating stations; in 1946, when the total output from the public supply stations in Great Britain exceeded 41,420,000,000 units, 99.3 per cent of the electricity supplied by the distributing undertakers in the country (excluding North Scotland) was produced at about 190 stations which were generating for the board. Moreover, until wartime conditions made it necessary for the board to depart from its normal peacetime policy and to keep a larger proportion of generating plant in commission to meet emergencies, a comparatively small number of the stations were required to run for long periods. For instance, in the twenty months preceding the outbreak of war,

Construction Cost

"CONSTRUCTION of the Grid up to the end of 1946 cost, in round figures, about £40,000,000 ($160,000,000). It now comprises 5,161 miles of transmission lines, about 3,765 of which are operated at the high pressure of 132,000 volts, and the remainder at 66,000 and lower voltages. There are 348 switching and transforming stations having an aggregate transformer capacity of 13,920,200 kilovolt amperes."

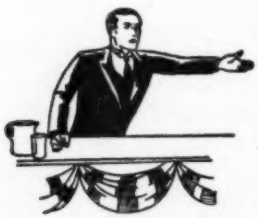
14 of the larger and more economical stations ran practically continuously and produced 50 per cent of the total number of units generated for the board, the remaining smaller and less efficient stations being used only for shorter periods at times of heavy load.

THE whole efficiency of the Grid system depends upon the exercise of effective control of generation and transmission. This is achieved through a national control organization in London which coördinates the operations of regional control centers in the several areas. From the regional control rooms the board's control engineers are in constant touch with all the selected stations in their respective areas, and it is their duty to give effect to programs of generation designed to ensure that the output of each station is so regulated that the public electricity for the country as a whole is provided at the lowest practicable cost. In practice this involves the use of the larger and more efficient stations for the long-hour or base load and the restriction of the use of the smaller and less efficient stations to the short-hour or peak load.

The output of all the selected stations is purchased by the board, which pays the full cost of production, and is sold by it to the distributing authorities, including the owners of those stations. Supplies given directly by the board are normally chargeable at the Grid tariff (which embodies the principle of a charge per kilowatt of maximum demand, adjusted according to power factor and to meet changes in local government rates, plus a running charge per unit sold, varying with the cost of fuel in the several areas. A progressive reduction of the kilowatt charge is made as the maximum demand of an undertaking increases. Special provisions govern the price of supplies to the selected station owners).

A NUMBER of important economies in production costs have resulted from the Grid scheme. In the first place, the possibility of mutual assistance in the event of plant in any one station being out of service, owing to overhaul, repair, or breakdown, makes it possible to operate safely with a smaller margin of spare plant than is necessary when each station has to provide its own stand-by capacity. The reduction in the proportion of stand-by plant required under Grid operation has thus effected a large saving of capital costs—a saving which it is difficult to compute, but which is probably equal to the capital expenditure on the construction of the Grid itself. Further economies have arisen from the interconnection working of the generating stations and from the installation of larger and more economical generating plant to meet growth of load, with the result that the average cost of generation per unit has been substantially reduced.

The Grid proved readily capable of application to the requirements of the nation at war, and it withstood, without serious damage, the intense aerial bombardment which continued for nearly five years. It should, however, be remembered that the Grid was constructed as an economic project for peacetime needs. It is now being reinforced and the generating capacity associated with it extended, as rapidly as conditions will permit, to meet the ever-increasing demand for electricity by the people of Great Britain.



"SOCIALISM says to a man: 'You are a unit in the state. Work hard for the state as the state thinks best and the state will provide you with what it thinks you should have.' We say 'You are an individual. Choose your own way in life and seek to develop to the full your own talents. If you do this and if you are prepared to accept the obligations that are essential to life in an ordered community, then we regard it as a duty of the government to see that out of the fruits of your labor you can build a life of your own for yourself and your family and at the same time feel the satisfaction of sharing in the common purpose of a free society.'"

—ANTHONY EDEN,
Former British Secretary of State for Foreign Affairs.

Washington and the Utilities

The Co-op Tax Issue Again

LOBBYISTS for farm coöperatives and others have volleyed and thundered against the House Small Business subcommittee, which is investigating alleged abuses of the coöperative movement in the United States. The opposition has not usually been on the merits of the charges that the co-op form of organization is sometimes used for tax dodging and other purposes not quite cricket. Instead, the political friends of the co-ops have pitched their denunciation of the House subcommittee investigation on a sort of reverse "smear" charge. If all the criticisms that the House group is trying to "smear" the co-ops really stick in the minds of the American public, then Representative Ploeser (Republican, Missouri) will find that his own subcommittee has been pretty well "smeared" itself and its work discredited in advance.

One of the stratagems of the co-op champions is based on the political vulnerability of co-op reform under a Republican Congress. Many of the co-ops admittedly are popular with the farmers and the GOP vote is centered pretty much in the farm belt. For that reason, cynical Washington observers are predicting that Ploeser's subcommittee will not find the Republican leadership in Congress as a whole too enthusiastic about taxing the co-ops or curbing them in any other way when the session opens next January. It is a presidential election year, and anything done to get the farmers mad enough to switch their party affiliation would be looked on as a political boner.

BE that as it may, Representative Ploeser is going ahead quietly with an agenda calculated to show up any dusky juveniles who might be lingering in the co-op wood pile. Field hearings have been scheduled in the following western areas: Seattle, September 9th-11th; San Francisco, September 18th-19th; and Los Angeles, September 23rd-25th. They will resume here in Washington in late October.

So far, the REA co-ops do not seem to be a part of the immediate investigation picture. But even though the earlier sessions of the Ploeser Committee, which opened up in Washington, D. C., confined themselves to the housing coöperative at Greenbelt, Maryland, co-ops generally, including REA co-ops, had no cause to cheer over the line of evidence being developed. Despite the usual defense of minimizing the tax-exempt feature of coöperative operations and the claim that consumer co-ops are not tax exempt at all, the House group reported that the Greenbelt housing co-op paid less than 30 per cent of the Federal taxes it would have paid as a private corporation over a period of seven years.

Even in 1946, when the excess profits tax was repealed, the Greenbelt Consumer Services, Inc., paid less than half the taxes a privately owned business would have paid operating under similar circumstances, according to subcommittee testimony. If this type of evidence continues to pile up at other hearings of the House subcommittee, it will be hard for co-ops to laugh it off. Just the same, it is also difficult to see the House Ways and Means Committee seriously entertaining any proposal for sticking a tax on co-ops next year.

The cold prospect seems to be that the Ploeser subcommittee will go on making a record which will not be raved

about, especially among Republicans, until 1948 elections are over. At that time Congress, even a Democratic Congress, might be more disposed to breathe life into the corpse of charges against coöperative chiseling and tax dodging.

As a matter of fact, the coöperatives themselves feel somewhat caught in the middle of rising resentment against unfair competition by private tax-paying business companies and the steady increase in Federal activity in favor of the farmer. Some of the Department of Agriculture aid to farmers these days is approaching the point where it is serious competition for coöperative activity. Yet it is the Federal government which provides the money for the farm program. Agricultural coöperatives take a dim view of government farm bureau agents making themselves so helpful to the farmer, doing about everything for the farmer except actually plowing his land and taking care of the chores.

At a meeting of the American Institute of Coöperation in Fort Collins, Colorado, delegates were told they faced "the most crucial period in the history of coöperatives." John H. Davis, executive secretary of the National Council of Farmer Coöperatives, called on the government to stay out of all farm activities except those which farmers themselves cannot perform. This was taken to indicate a feeling of unrest in co-op ranks over the constant encroachment of government into farm matters. It may represent an agitation that could spill over into the REA field. The institute's executive council, headed by Co-op Manager Quentin Reynolds, planned united action against congressional attacks.

Sic Transit Gloria Fundy!

Speaking of breathing life into corpses, the ghost of old Passamaquoddy got up and took a flying trip between Eastport, Maine, and Washington, D. C., just before Labor Day. After that it promptly laid down beside that well-known rock-bound coast and took over, once more, its silent vigil beside the rushing tides of the Bay of Fundy.

What started this latest rattling of the bones of the New Deal's $7,000,000 boondoggle (so far, anyhow) was the decision of the War Assets Administration to sell "Quoddy village" as surplus property, valued at slightly less than $400,000. The city of Eastport, Maine, got an inspiration when it noticed that municipalities and other public agencies could bid in surplus property at much less than tentative surplus value, providing there was a "public benefit allowance," such as a city bidding in medical supplies for its hospitals or recreation equipment for a municipal park.

Eastport proposed to use "Quoddy village" for a $1,000,000 program for training European displaced persons. The training center would operate under the supervision of Frank E. Cohen, New York and Philadelphia transit manufacturer, who would train DP's for six months and then send them to South America for colonization. Their production—tractors and other implements—also would be exported to South America to help along the colonization.

But the labor groups sent up the first howl, because Eastport would not pay the DP's during their training period. WAA's own labor adviser group condemned the proposal as a scheme to exploit free labor of unfortunate persons and therefore undemocratic. A less hectic protest came from die-hard public power proponents who still look on Quoddy as a sort of ace in the hole, to be revived if, as, and when the power supply situation in the northeastern part of the United States might warrant further development of the tidal power project on the Bay of Fundy.

On August 27th the WAA ruled that the city of Eastport's plan was ineligible for "public benefit allowances." WAA's stand was announced after a special meeting of Federal officials, who issued a joint statement calling the plan essentially industrial rather than educational in character.

The following day President Truman

told callers that he would like to see the day when the Passamaquoddy tidal power project off the Maine coast would be resumed and completed. The President was described by a White House secretary as having called the project a good one. It was said, however, that there were no immediate plans for pushing the project.

Senator Brewster, Maine Republican, gave Quoddy's ghost a pat on the back when he said that he also had hopes of reviving the project, and even intimated that an attempt might be made to do so in the next session of Congress.

When all these echoes had died away, those in the know in the nation's capital were in agreement that Quoddy has about as much chance of revival at the next session of Congress as a snowball on the streets of Washington in mid-August. The Republican Congress is in no mood for sinking more American dollars in the Atlantic ocean at this time, following the $7,000,000 invested in 1934 when political opposition in Congress caused even the late President Roosevelt in the heyday of the first New Deal to call a halt.

The long-range prospects do not seem much brighter. Chances are fair that even making electricity via atomic energy will get into the practical stage before circumstances warrant spending another dime on the Bay of Fundy. But, by the same token, President Truman can safely make hopeful statements to keep alive local interest in the heart of the GOP state of Maine.

Northwest Power Deals

An armistice in the public-private power controversy in the Pacific Northwest has been declared. Late in August officials of five major public utility companies in that area signed 1-year contracts with Bonneville Power Administration for the delivery of up to 335,000 kilowatts of firm power. It is the largest single sale of power by BPA in its 10-year history and marks the first time, with minor exceptions, that the companies have been able to obtain Bonneville power on a basis other than day-to-day sales. The power will be shared in varying amounts by the Pacific Power & Light Company, Washington Water Power Company, Portland General Electric Company, Puget Sound Power & Light Company, and Mountain States Power Company.

The private power companies in the Northwest also agreed to transmit power over their own lines for Bonneville's account to serve additional public bodies and rural electric co-ops. Cost to the companies of firm power is the standard Bonneville figure—$17.50 per kilowatt year. Surplus power will be sold at 2¼ mills a kilowatt hour, and the contracts may be extended for another year if additional power becomes available at Bonneville. The companies were willing to contract for 600,000 kilowatts, but BPA announced that 335,000 kilowatts represented the total capacity for sale.

Meanwhile, a new plan for the sale of the Puget Sound Power & Light Company to 15 Washington state public utility districts is in the formative stage. The proposal follows the refusal of the Washington Supreme Court to reconsider its decision denying Skagit County Public Utility District the right to act as agent for the other districts in negotiating the sale. The new plan would set up a nonprofit corporation to act as agent. It would (1) buy the company, and (2) sell it piecemeal to the 15 districts. Under the proposal, the deal would involve the same principal amount of money — $135,000,000. (See also page 454.)

Inch Lines Deal Nears Close

The Federal Power Commission is not expected to interpose much delay or many restrictive conditions on Tennessee Eastern Transmission Corporation's certificate to operate the Big and Little Inch pipe lines. This, despite the usual barrage of opposition from coal, labor, and other rival interests at the FPC hearings.

The fuel interests are concerned chiefly about opening the rich Philadelphia market to natural gas. One witness even went so far as to say that the coke business would be knocked right out of the picture. But when he was asked whether the people in the Philadelphia area did not have the right to use natural gas fuel if they could get it, he had to admit that there was not much argument against it from the standpoint of public interest.

With the winter heating season fast coming along, FPC is likely to listen very politely to the opposition, but clear the Tennessee Eastern certificate just the same. Two cogent reasons were advanced by pipe-line company witnesses for a prompt and comprehensive operating ticket. First was the testimony of the company's president, R. H. Hargrove, who pointed out that unrestricted operation of the lines was necessary to insure revenue - producing possibilities that would enable the company to pay out its investment in the former government surplus lines. Handicapping or hamstringing such operations by way of restrictions on load or marketing, it was contended, would be like taking advantage of a bona fide purchase of government property after the original deal was agreed upon.

The second witness pointed to the urgency of the time factor. He was August Belmont, representing Dillon, Read, the New York financial house. Belmont observed that it would be necessary for the FPC approval not only to clear the November 26th deadline on which the company must make its final payment for the line, but clear that date sufficiently in advance for the Securities and Exchange Commission to approve the proposed financial setup of the company. This, the witness stated, would take a minimum of from two to three weeks, which means that the FPC should clear the petition by November 1st if not sooner. Prospects seem good that the FPC will do that very thing.

The proposed financing for Tennessee Eastern Transmission Corporation runs a little heavy to bonds—approximately 80 per cent. Belmont hinted that there was a good chance the whole offering might be absorbed by institutional investors without the need for a public offering. Dillon, Read's own generous assistance in floating the company's financial arrangements, so far, indicates the high regard which the Inch line deal enjoys in financial circles.

Aside from the Inch line certificate matter, which was the biggest gas thing on FPC's immediate agenda, it appeared that FPC would like to dissolve any doubts that it is, or has been, unduly dilatory in approving pipe-line certificates. This was seen in the release of figures on new authorizations for gas transmission systems during fiscal year 1947 (July 1, 1946, to June 30, 1947). FPC pointed out that it had approved additions of capacity totaling at least 1,861,000,000 cubic feet daily and costing $273,190,302, more than twice the expenditure of the previous year. The new additions will benefit 80 large cities and other communities in 20 states.

New Oil-Gas Group Members

New members appointed to the National Petroleum Council were announced recently by Secretary of the Interior J. A. Krug. The council was created by the Secretary to advise the Federal government on oil and gas problems and is composed of outstanding representatives in the field.

The new members include Bruce K. Brown of Chicago, president of the Pan-American Petroleum Corporation of New Orleans and vice president of the Standard (Indiana) Oil Company; Ardon B. Judd of Houston, Texas, president of the Petroleum Equipment Suppliers Association and vice president and general manager of the Republic Supply Company; Alexander Fraser of New York, president of Shell Union Oil Company; Russel S. Williams of Indianapolis, president of the Individually Branded Petroleum Association of America, and also president of Gasteria, Inc., of Indianapolis.

Reclamation Bureau Lists Power Expenditures During Current Fiscal Year

OFFICIAL breakdown of Reclamation Bureau's fiscal year 1948 budget reveals a total of $34,754,037 now allocated for power facilities.

Interior Department's Bureau of Reclamation is proceeding on a "full steam ahead" basis to spend the $89,528,038 appropriated for it by Congress during the current fiscal year. Of this amount, more than one-third will be spent for power facilities on multipurpose projects. Figures are not yet available on funds to be expended by the bureau on projects in the Columbia and Missouri river basins. Following is an official list of power expenditures, totaling $34,754,037, and showing just where and how much money has been allotted to various Reclamation developments. This list was prepared by the Reclamation Bureau for PUBLIC UTILITIES FORTNIGHTLY.

Boise-Anderson Ranch Dam, Idaho	
Powerhouse	$ 322,000
Turbines & Generators	550,000
Accessory Elec. Equipment	100,000
Misc. Power Plant Equip.	100,000
Switchyard Structure	50,000
Switchyard Equipment	50,000
Transmission Line	50,000
	$ 1,222,000
Deschutes, Oregon	
Cove Power Plant (Diversion Dam Repair)	33,483
	$ 33,483
Hungry Horse, Montana	
Powerhouse	150,000
Turbines & Generators	50,000
	$ 200,000
Palisades, Idaho-Wyoming	
Power Line	63,000
Power Plant	82,000
	$ 145,000
Yakima-Roza, Washington	
Spec. 1805—Trans. Lines	200,000
Transformers & Equipment	1,695
	$ 201,695
Central Valley, California	
Friant Power Plant Studies	100
Shasta Power Plant—	
Structures & Improvements	220,800
Gates & Valves	320,200
Penstocks	651,800
Misc. Engr. & Contingencies	248,300
Turbines & Generators	950,600
Accessory Elec. Equipment	198,000
Misc. Power Plant Equip.	40,000
Keswick Power Plant	
Structures & Improvements	112,500
Turbines & Generators	941,000
Accessory Elec. Equipment	306,500
Misc. Power Plant Equip.	336,800
Shasta Switchyard	629,300
Keswick Switchyard	424,100
Elverta Switchyard	101,000
Tracy Switchyard	146,000
Transmission Lines—	
Shasta-Oroville	10,000
Oroville-Elverta	937,900
Elverta-Perkins	203,300
Perkins-Tracy	200,000
Keswick Tap Lines	100,000
Shasta-Tracy	1,025,000
Tracy-Contra Costa	20,000
Contra Costa-Clayton-Ygnacio	80,000
Clayton & Ygnacio Substations	24,000
Misc. Constr. Facilities	22,000
Keswick Dam	1,206,900
Exam. & Surveys	30,000
Communications	78,000
	$ 9,564,100
Boulder Canyon, Arizona-Nevada	
Power Plant & Equipment	125,411
Transmission Plant	15,000
Boulder City Electric System	171,834
	$ 312,245
Davis Dam, Arizona-Nevada	
Power Plant Structure	1,029,529
Turbines & Generators	2,927,452
Accessory Elec. Equipment	447,754
Misc. Power Plant Equip.	367,352
Terminal Facilities	145,488
Trans. Lines & Substations—	
Davis-Kingman-Needles	74,000
Davis-Phoenix	90,390
Davis-Hoover	58,740
230 kv. Parker Interconnection	1,948,447
Second Parker-Phoenix	8,325
Bank #2 Phoenix	6,000
Bank #4 Phoenix	128,306
Tucson-Deming Interconnection	75,000
Second Phoenix-Tucson	858,851
Phoenix Substation Additions	24,916
Prescott-Phoenix 230 kv.	231,157
2nd Parker Transformer Bank	59,915
2nd Parker-Gila	694,055
Yuma 34.5 kv. System	143,521
2nd Phoenix-Tucson Substations	179,863
Communications & Control	7,200
	$ 9,506,261
Parker Dam Power, Arizona-California	
Power Plant	13,093

Transmission Plant	320
Gila Substation	26,011
General Plant	62,509
	$ 101,933
Rio Grande, New Mexico-Texas	
Elephant Butte Power Plant Alterations	7,000
Las Cruces-Alamogordo Trans. Line	9,289
Switching Station-Las Cruces	22,600
Substation-White Sands	15,000
Substation—Alamogordo	26,800
Army Air Base-Alamogordo Trans. Line	3,400
Substation-Alamogordo	177,800
Alamagordo-Hollywood Trans. Line	104,300
Substation-Hollywood	148,600
Switching Fac.-Elephant Butte	92,500
Substation-Socorro	137,700
Elephant Butte-Socorro Trans. Line	594,400
Socorro-Albuquerque Trans. Line	10,000
Substation-Albuquerque	10,000
Sierra Coop. Substation	22,600
Distance relays for Las Cruces-Alamogordo Trans. Line	1,900
Peterson Coil at Elephant Butte	20,000
	$ 1,403,889
Fort Peck, Montana	
Glendive-Miles City Trans. Line	639,463
Miles City Substation	48,500
Trans. Line to Substation	12,200
Distribution Substations	105,337
Ft. Peck-Williston Trans. Line	1,327,901
Williston Substation	198,000
Wolf Point Substation	84,000
Trans. Line to Distr. Substations	34,840
Distr. Substations	45,600
Ft. Peck-Frazer Trans. Line	63,257
Distribution Substations	23,000
Havre-Shelby Trans. Line	368,321
Havre, Gilford & Shelby Sub.	200,000
Power Studies	10,000
	$ 3,160,419
Shoshone, Wyoming	
Production Plant	508,030
Transmission Plant	517,860
General Plant	26,144
	$ 1,052,034
Colorado-Big Thompson, Colorado	
Green Mt. Power Plant	17,785
Estes Park Aqueduct & Pwr. System	5,540,840
Estes Park Lake	700,000
Estes-Flatiron-Greeley-Sterling 2 lines	417,500
Sterling-Holyoke-Wray-Brush Loop	377,772
Greeley-Brighton-East Denver-West Denver Line	11,000
Brighton-Longmont-Loveland-Fort Collins-Greeley Line	4,000
Estes-Marv's Lake, Estes-Granby	20,000
	$ 7,088,897
Kendrick, Wyoming	
Seminoe Power Plant	147
Transmission System	733,734
General Plant	28,200
	$ 762,081
Total	$34,754,037

"It is no exaggeration to say that all of the major ills with which the American economy is now beset would be well on the way to correction if there were assurance that production would not be interrupted by strikes in major industries, if workers would put forth their best efforts to earn through increased productivity the high hourly wages they currently receive, and if to management were held out the prospect of profits sufficiently generous to ensure a heavy and continuous flow of new capital into the expansion of old business enterprises and the development of new."

—EXCERPT *from "Business Bulletin," published by Cleveland Trust Company.*

Exchange Calls And Gossip

Is the Two Rivers Case a Straw In the Wind?

THE little city of Two Rivers, Wisconsin, recently played host to a most significant theory of telephone rate making, a theory that might mark the renaissance of price fixing as we knew it under OPA. In deciding a case involving the Commonwealth Telephone Company and the city of Two Rivers, the Wisconsin Public Service Commission set rates on a judgment basis rather than on a rate base determined by evaluating the phone company's property cost and allowable rate of return value. Thus the commission adopted as its basic legal concept of utility rate making its authority to fix prices, or, in other words, its "police powers," rather than the conventional concept of "eminent domain," meaning the use of a rate of return on a fixed rate base. (See, also, page 457.)

What the commission did was this: First it estimated the reasonable future cost incurred in the furnishing of such service as the public may reasonably be expected to demand from the utility here involved. Then it estimated the value of any class of that utility's service, where that value constituted the limitation upon and practical equivalent of the rates charged therefor. And finally it decided what would be a reasonable profit which it would be proper for the utility to enjoy under all relevant facts and circumstances.

THE commission stated its view that the Supreme Court, in the Hope Natural Gas Company Case, had "discarded the eminent domain theory and basis of rate making, as announced in Smyth *v.* Ames . . . and has gone back to the doctrine as originally announced in Munn *v.* Illinois . . . to the effect that rate making is price fixing through the exercise of the police power of government, and that legal principles applicable to the exercise of eminent domain have no place in rate regulation. Consequently, as we view it," said the commission, "the relationship between the net profits which any rate schedule will afford and whatever might properly be substituted for fair value as the proper equivalent of a rate base (whether or not expressed percentagewise as a 'rate of return') no longer constitutes a valid test as to either the legal validity or the reasonableness of the rates specified in that schedule."

The Commonwealth Telephone Company immediately sought and obtained an injunction from a lower state court restraining the commission from putting its order into effect. The order would reduce rates by $10,000, but the principle involved actually is far more vital than the loss of revenue.

This switchover in approach to rate making sent public utility regulators and regulatees scurrying to the archives to see just how far the idea could spread. The general consensus seemed to be that any possible shift to "police power" rate making in any state would depend ultimately on the wording of the public utility law in that state. Eighteen states, it was found after a hasty check, have laws which specifically require that some finding of "value" be made in determining rates, and in two cases (Maryland and Nebraska) the requisite applies to telephone rates only. But in 24 other states the regulatory statute does not contain any "value" clause, and the other 6 states have no plenary statute at all.

The states where some finding of

"value" is required by law are: Connecticut, Kansas, Maine, Maryland (telephone), Michigan, New York, North Dakota, Pennsylvania, Texas (gas only), and Washington. Those states requiring consideration of reproduction cost, original cost, or some other standard or combination of values are: Alabama, Indiana, Kentucky, New Mexico, North Carolina, Oklahoma (required by state Constitution), Nebraska (telephone), and Ohio. The following states have regulatory statutes which fix no definite standard for rate-making determination: Arizona, Arkansas, California, Colorado, Georgia, Idaho, Illinois, Louisiana, Massachusetts, Missouri, Montana, Nevada, New Hampshire, New Jersey, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. These states have no plenary regulatory statute: Delaware, Florida, Iowa, Minnesota, Mississippi, and South Dakota.

As far as intervention by the Federal courts is concerned, successfully challenging the doctrine on grounds of unconstitutional confiscation does not seem too likely. Regulatory experts point out that the "end result" test, stated also in the Hope Case by the Supreme Court, would be the only apparent restriction on regulatory discretion. Lest this story sound too ominous to industry readers, perhaps it had better be said at its conclusion that the "police power" theory can work both ways—result in rate increases as well as rate cuts. The commissions would be the real price umpires.

Unions Battle in Open

TELEPHONE union activity continues at a hot pace as the various groups cope with the Taft-Hartley Act and company recognition requests. The Communications Workers of America were among the first to file non-Communist affidavits with the renovated National Labor Relations Board, while CIO units from top international levels to bottom still refuse to play ball with NLRB at all. The CWA openly challenged the CIO's new Telephone Workers Organizing Committee to show it had signed up a single member after three months of strenuous organizing efforts. The two unions are at direct odds over control of the 22,000 workers in AT&T's Long Lines Department. TWOC must show that it represents 50 per cent of the workers by October 10th or it will again lose its bargaining rights.

On other fronts the battle has not reached the certification stage, but it is still hot and surprisingly clean. On two occasions this month, for example, CIO and CWA organizers stood on the same stage at mass meetings and pleaded their cause in turn. On September 3rd, at Charleston, West Virginia, CWA's secretary-treasurer, Carlton Werkau, appeared on the same program with TWOC's John J. Moran, at a CWA union rally. On September 9th in Baltimore, CWA President Joseph Beirne, TWOC representative Ted Silvey, and AFL spokesman Harry Broach addressed a special committee meeting of delegates from every Maryland telephone union.

While CWA continues to rack up majority figures in balloting here and there throughout the states, the big independent has not forgotten its long-range intention to affiliate with either of the "Houses of Labor" if terms are right. In this month's issue of *The CWA News*, its national publication, CWA editorially urged the CIO to abandon TWOC for the following reason:

> The CIO should keep clean hands so as to be in a position to encourage the understanding and trust that may make easier the settlement of the long-term affiliation question . . . It would seem foolish to spend money in trying to raid phone workers' unions, particularly when the leaders — and many of the members—are not opposed to CIO as such, but who will defeat TWOC for what it is . . .

Idlewild Still an Item

GETTING back to the Taft-Hartley Act, by far the most unusual occur-

rence of the month was that of the United Telephone Organizations, an independent telephone union in New York city, filing a complaint against the International Brotherhood of Electrical Workers (AFL) with the NLRB. The charge: violation of the Taft-Hartley Act. It was another development in the longest jurisdictional strike ever to tie up wire communications. For two years and four months a jurisdictional battle has raged over which of two unions will pull cables for phone installation at Idlewild airport. Conditions at LaGuardia airport have become dangerous due to the tremendous increase in air traffic, forcing the New York city administration to take a hand in the fuss and seek completion of the supplementary air terminal. After trying various compromise proposals, Mayor O'Dwyer finally ordered one of his plans to be carried out. This was the agreement reported in this column last issue (September 11th), and it is now in effect despite UTO's opposition to it.

The New York Telephone Company, caught squarely in the middle of the mess, directed each union to do specified work under the compromise order of the mayor's, which allotted part of the installation work to each union. It was the company's direction that gave the UTO the basis for its complaint against IBEW. One section of the Taft-Hartley Act states that "it shall be an unfair labor practice for labor organizations or its agents . . . to force or require any employer to assign particular work to employees in a particular labor organization." Local 3 of the IBEW, reads the complaint, breached this provision of the law when it refused to "perform any services in connection with conduit and telephone installations . . . the object thereof was to force or require that New York Telephone Company assign particular work to members of Local 3 . . . rather than to employees of the . . . company," who are members of UTO.

A few days later, UTO was to have filed charges for damages under the Taft-Hartley Act against IBEW in Federal court. The union declared that the work at Idlewild would probably be completed before any court or board test could be arranged, but that it would press both complaints to settle the principle involved.

Officials pointed out that swift NLRB action was unlikely. For one thing, UTO only filed its non-Communist affidavits (necessary before NLRB could act on its complaint) around mid-September, delaying the processing of its own charges somewhat. The NLRB could decide to issue a complaint against IBEW, after it studied the case, but, if the work were all finished, any subsequent injunction would be useless. Both unions and city labor officials expressed their dislike of having to use the offices of NLRB for redress in this row. Doing business with the board is considered in poor taste among unions these days, in many cases. At any rate, the compromise agreement of Mayor O'Dwyer did end a jurisdictional strike, and as such it is entitled to receive credit for one accomplishment.

Jones Moves Upstairs

The Federal Communications Commission welcomed its newest member this month when Representative Robert F. Jones of Ohio shed his congressional clothes and donned the regulatory robes of a Federal commissioner. The commission then held its first fall meeting and began discussing its own reorganization into three divisions. The plan to split the commission into broadcast, common carrier, and safety and special services divisions, with each commissioner sitting on two of them while the chairman sits on all three, was originated by Chairman Denny. Ostensibly this split would remove the necessity for congressional action along a similar line, as proposed this year in the White-Wolverton Bill. Under that bill, the commission would divide itself into only two divisions, with the post of chairman reduced to practical impotence. Denny contends that so long as the present Federal Communications Act gives the commission the right to divide itself in any way it sees fit, there is no need for new law.

Financial News and Comment

By OWEN ELY

Progress of Holding Company Integration

(Continued from previous issue)

NEW ENGLAND PUBLIC SERVICE — New England Public Service is about to retire its prior preferred stocks under a plan approved by the SEC and a Federal court. A plan is now awaited for allocation of remaining assets between the plain preferred and common stocks.

Niagara Hudson Power — Merger program of Niagara Hudson has been delayed by the investigation of the public service commission, which has not yet ordered hearings.

Northern States Power — A vast amount of work has been done in devising a long series of plans for allocating the shares of the company's subsidiary (Northern States Power of Minnesota) to the preferred and class A stockholders. The situation still remains somewhat confused, in the absence of SEC guidance.

North American Company—The company's integration program is about 75 per cent completed but a last-minute hitch occurred in the proposed settlement with common stockholders of North American Light & Power.

Public Service of New Jersey — An adjusted plan has been filed with the SEC, with various exchange ratios based on estimated values of new securities. However, first half earnings for the top company made an unfavorable showing ($1.21 *versus* $1.51) and while this is apparently due to a slump in transit earnings, the figures (unless explained) might affect the smooth sailing of the plan.

Standard Gas & Electric—The company appears to be marking time. The valuation data being prepared by Stone & Webster and J. Samuel Hartt, and the plan to be based thereon, have apparently been indefinitely delayed. (They were expected to be ready around April or May.)

United Corporation — A mandatory plan has been filed by United to retire its preferred stock. This plan awaits SEC action.

United Light & Railways — Two recent plans are before the SEC and hearings were resumed after Labor Day. The basic issue appears to be whether the electric and gas systems can be held together under one top management pending completion of the proposed pipe line.

"Investment Value"

MUCH is heard these days at Philadelphia, in holding company proceedings before the SEC, of "investment value" and the "bundle of rights" theory. In general these concepts are used to justify somewhat higher values than current market (or prices based on current market yardsticks) in preparing formulas for exchanges of portfolio holdings for senior holding company securities which are being retired. Cases in point were the New England Electric System exchange for RIPS preferred, the pending plans for retirement of the preferred stocks of United Corporation and Commonwealth & Southern, the trustee's plans for retiring International Hydro-Electric bonds, etc. In other words it has become the current custom to "skimp" a little in preparing exchange packages

(whether voluntary or mandatory), with the idea that current values frequently do not reflect favorable future developments —which developments enter into the "investment value" as opposed to the "unseasoned" or speculative market price.

The "bundle of rights" theory implies that a broader view of the respective rights of holders of senior *versus* junior securities should be taken than the "strict priority" views held by the late Judge Healy and others. In other words the option on future earnings enjoyed by the common stock might entitle it to larger participation than it might obtain on a priority basis.

MORE recently the question of redemption premiums on senior securities has come to the fore. A few years ago in some of the earlier cases the SEC seemed opposed to granting these premiums. Later, with a substantial advance in security prices, the concession was made in several cases and it looked as though a precedent was being established in favor of paying the premiums—especially on bonds and on preferred stocks without arrears. However, this revival of the "strict priority" concept suffered a sharp setback in the decision of Judge Leahy in the Engineers Public Service Case (U.S. District Court of Delaware, Civil Action No. 995, May 15, 1947). Judge Leahy's denial of the preferred stockholders' claim to the call premiums was supported by the following reasoning (quotations include text and footnotes intermingled):

> Certain common stockholders argue that this plan involves a true liquidation as distinguished from the fictitious liquidation involved in *Re* United Light & Power Co. . . . and that consequently the stock rights of the various security holders are not to be treated as though in a continuing enterprise. Since this is a true liquidation, the parties argue, the charter provisions do apply and therefore the preferreds are not entitled to a premium. The charter in this case provides that the preferreds shall be entitled to a premium only in the event that the winding up is voluntary; and this and other courts have held that, where a company must change its capital structure because of the impact of the act, the winding up or reorganization is not voluntary. . . . Independently of the previous argument of the commission and the prior holdings on the matter, it seems obvious that a plan, whether submitted by the company or the commission, is not a voluntary plan. Congress has ordained certain action and when the company takes such action it can be said to be voluntary only in a Pickwickian sense. . . . [However] I prefer not to definitively decide this particular point but to consider the charter provisions of the company as but one of several factors in determining the relative rights of the various security holders.

In considering these "several factors" Judge Leahy studied the market history of the preferred stocks, citing the following facts: (1) None of the three series was initially sold to the public for more than $100 per share, despite the addition of convertible and warrant features; the company probably did not receive more than $98. (2) The market history ex the conversion and warrant privileges had shown an average price much below $100. (3) Dividends were omitted for a 3-year period, though later paid off.

EXPERT testimony by Dr. R. A. Badger claimed a present value substantially above par, based on "all charges and preferred dividends earned," "proportion of prior obligations to total capitalization," "book value of equity per share of preferred," "per cent of quick net assets to prior obligations," and "times parent company dividends were earned." Judge Leahy accepted Dr. Badger's values but held that they "are not controlling because the plan itself does not propose to give these amounts to the preferreds. Further, it is unnecessary to decide whether these values would more than offset the other factors previously considered and consequently justify the payment of a premium, for in this case this factor is neutralized and rendered impotent by several other considerations. What the plan overlooks is that this is not a 1-way argument but a 2-way argument. The necessity and impact of the plan which makes the preferreds give up this present enhanced value also work to the detriment of the common. In order to comply with the divestment orders, many of the assets of Engineers were

sold for less than the carrying value on Engineers' books, and many of such securities thus disposed of subsequently increased in market value or capitalized earning power greatly in excess of the amounts realized by Engineers upon their sale. In short, the forced divestment orders have worked a hardship on both the common as well as the preferred stocks.

"Moreover, and what is probably more important, a significant reason why the present preferreds are able to be evaluated at more than their redemption prices is because of retained earnings over a period of years not paid as dividends to the common stockholders. The past sacrifices and contributions of the common contributed significantly to the present value of the preferreds."

PROVIDED Judge Leahy's opinions are sustained by the U.S. Court of Appeals and by the Supreme Court, the decision will be of special interest to holders of the speculative common stock "stubs" of Engineers Public Service, the preferred stock "stubs" of Electric Bond and Share, etc. The Engineers stubs are currently around 1½, but have an estimated liquidating value of over $3 if the entire $4,000,000 escrow fund is released to them; on the other hand, if the higher courts reverse Judge Leahy the "stubs" might be worth $1 or less (depending principally on tax settlements). The Electric Bond and Share "stubs" would of course become worthless if the redemption premium claims were ruled out (and there are some points of similarity with the Engineers preferred stocks as to market history, etc.). The decision will also affect the settlements to be made with the holders of various preferred stock issues in pending cases.

General Public Utilities

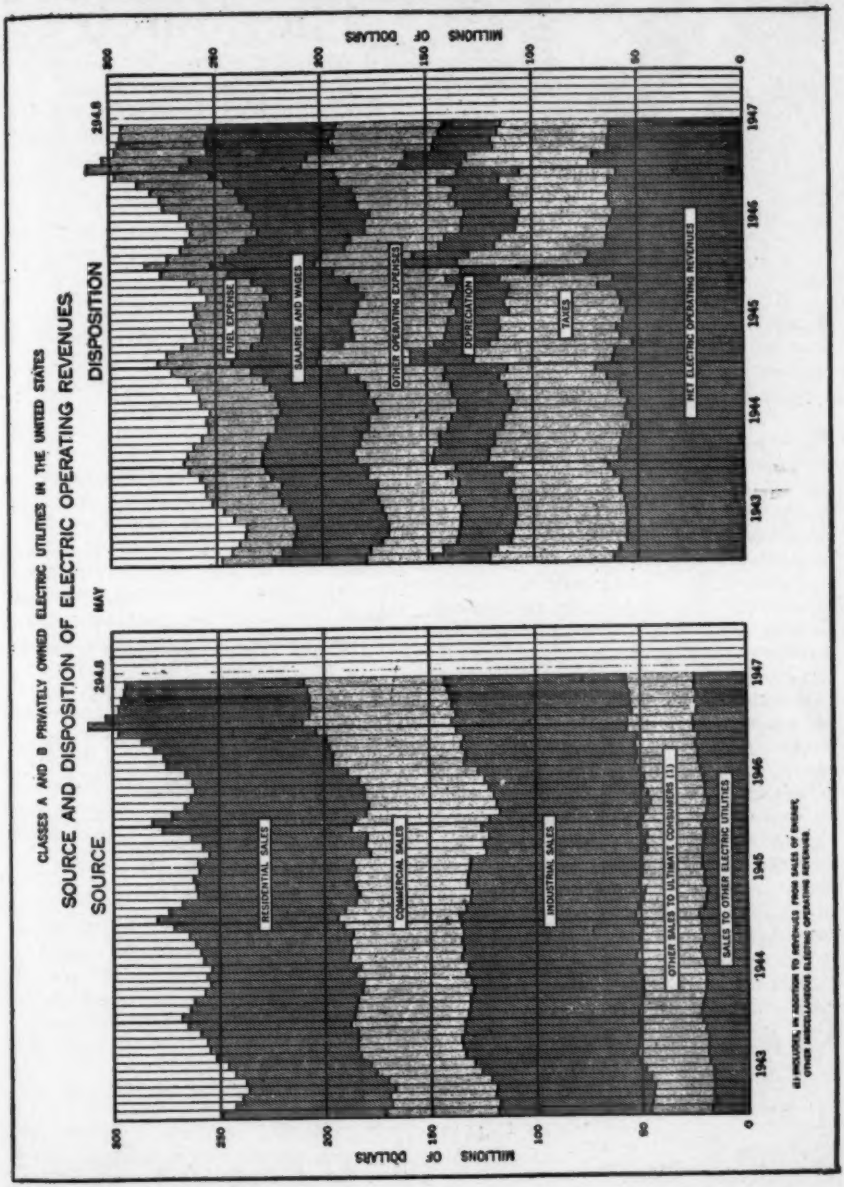
HAROLD YOUNG, utility analyst of Eastman, Dillon & Co., has recently prepared a 9-page analysis of General Public Utilities. He points out that, while excellent gains in earnings were registered in the second quarter this year, the stock continues close to its lowest levels since issuance in reorganization. The current price is only about 6½ times the total system earnings, including the nonconsolidated earnings of Associated Electric Company and Manila Electric Company.

While the system was under the supervision of the Federal District Court and the SEC, the trustees were able to increase operating efficiency and improve the physical condition of the properties. Outlying units were disposed of, complex intercorporate relations and financial entanglements unraveled, and rates reduced. Important refunding operations have been consummated for the operating subsidiaries in the past year or so, establishing these companies on a sound credit basis.

Regarding the situation in the Philippines, Mr. Young points out that business recovery has been very rapid and in due course the properties may be earning as much as, or more than, their prewar earnings. It is expected that the company will recover a reasonable amount of war damages from the U. S. government.

IN general, the system operates in small and modest-sized communities, with only three cities of over 100,000 population in its territory. As a result there is excellent diversification, with little dependence on heavy industries and a substantial amount of good farm area (where use of electricity for dairy power, etc., is steadily increasing). The recent growth of business over last year has been running substantially better than for the Middle Atlantic states as a group.

An interesting point with respect to the capitalization of the top company is that share earnings are currently based on the maximum number of shares issuable under the recapitalization of the Associated Gas companies. It now appears likely that some of these shares will never be issued and this will not only increase the share earnings, but will also permit cancellation of all past dividends declared on these excess shares, thus releasing cash.



Federal Power Commission

The March of Events

In General

Seek Bill to Give States Title to Tidelands

LEGISLATION by the national Congress, giving the states definite control and ownership of the tidelands, will be sought by the attorneys general of the various states, it was announced at Austin, Texas, recently.

Walter Johnson, Nebraska attorney general and president of the National Association of Attorneys General, on September 4th appointed a committee to map plans for the campaign.

The committee was scheduled to meet at an early date to draw up recommendations for action by the national association at its annual convention in Boston in October.

Governor Beauford H. Jester of Texas has announced that he will carry his tidelands fight to the Southern Governors Conference October 19th at Asheville, North Carolina.

Secretary of Interior J. A. Krug on September 5th announced that Attorney General Tom Clark had informed him the Federal government does not now have the right to lease submerged coastal lands for oil and gas development.

Farm Electrification Conference

CONTINUED success of the farm electrification movement is the goal of the National Farm Electrification Conference to be held October 7th and 8th at the Claypool hotel, Indianapolis, Indiana. More than 500 persons are expected to attend the conference, including Agriculture Department officials, power company executives, electrical manufacturers, educators, and representatives of the farm and electrical press.

Principal speakers will be Claude R. Wickard, Rural Electrification Administrator; J. E. Stanford, executive secretary, Kentucky Farm Bureau Federation; and L. M. Smith, vice president and director of public relations, Alabama Power Company. Four panel discussions on farm electric problems will also be featured.

All-out Fight on Seaway

CARROLL B. HUNTRESS, new president of the St. Lawrence Project Conference, said recently that an "all-out offensive" against the proposed St. Lawrence seaway would be waged by his group. Mr. Huntress, New York city business executive, succeeded Frank Davis as president of the conference.

In a statement Mr. Huntress described the proposed seaway and power development as a "collective scheme" and an "attempt by selfish interests to cripple the American enterprise system with another TVA."

California

Lease Plan Rejected

THE offer of J. L. Haugh, East Bay transit operator, to lease the San Francisco Municipal Railway for $700,000 a year was rejected recently by the city's supervisors.

The supervisors, however, left the door open for Haugh or others to submit a lease or outright sale proposition if the people turn down the $20,000,000 railway rehabilitation bond issue at the November election.

Haugh gave no assurance he would be in a position to renew the offer after the election. The president of the Western Transit Company of Oakland said he would be forced to cancel an option to purchase 700 busses which he planned to use for modernization of the system.

Recognizing the supervisors could not dispose of the rail properties without authorization from the people, Haugh had urged the board to place a permissive charter amendment on the November ballot.

Mayor Lapham counseled against this step at a recent meeting, saying separate amendments to lease the system and to finance improvements by a bond issue would "confuse" the voters.

Colorado

Utility Control Plans Aired

THE controversial question of what city agency shall have regulatory and rate-making powers for public utilities, the city council, the department of public works, or a new city department known as the division of utilities, was aired before the public works committee of Denver's charter convention early this month.

Spokesmen for the utility companies, including the Mountain States Telephone & Telegraph Company and the Public Service Company of Colorado, strongly advocated that city council retain its present powers of utility regulation under the new charter. They expressed opposition to a charter proposal by William E. Doyle that such authority be delegated to a new city department known as the division of utilities, which would be accountable to the mayor.

Doyle contended that his charter proposal, if adopted, would save Denver consumers millions of dollars yearly in public utility rates.

Gene Cervi, Democratic state chairman, advocated stricter city regulation of public utilities. He charged that political activities of utilities constitute a corruptive influence, particularly in Colorado legislative circles. He recommended that rate-making powers for utilities be taken away from the city council and delegated to a utilities department under the mayor to enable the "people to have a voice in its operation."

Speaking in behalf of the utilities and city council control were Attorneys William Bryans III and Charles J. Kelly, representing the Public Service Company, and Elmer Brock, representing the Mountain States Telephone & Telegraph Company.

Bryans contended that under the present system of utility regulation the Public Service Company had consistently reduced rates during the last twenty years.

Florida

Tax Ordinances Vetoed

MAYOR C. Frank Whitehead on September 3rd vetoed two ordinances passed by the city council placing a tax upon Jacksonville's users of electricity, water, gas, and telephone service. He returned the two measures to council with a veto message recommending that council provide amendments or new bills setting up a wider scale of taxation benefiting small users of utilities and "for the relief of industries and businesses" using the utilities.

The two ordinances provided that Jacksonville users of electricity, water, gas, and telephone service pay a 10 per cent monthly tax on bills under $500, 5 per cent monthly on accounts on the next $1,500, and 1 per cent on bills in excess of $2,000.

Mayor Whitehead said that he would "consider approving" the municipal tax on the following scale: 10 per cent on monthly statements from $50 to $100, 7 per cent from $100 to $200, 6 per cent on from $200 to $500, 5 per cent on $1,000 to $1,500, and 1 per cent on bills in excess of $1,500. There would be no tax on bills under $50, he indicated.

Georgia

Penalties for Gas Failure Asked

THE state public service commission on September 3rd recommended that the Atlanta Gas Light Company pay stiff penalties to large commercial and industrial consumers when it fails to provide firm, uninterrupted service.

The utility was given until September 29th to show cause why the rate revision should not be imposed in an effort to force a larger supply of natural gas to business houses and industries using more than 200,000 cubic feet daily.

The gas utility told the commission that it was spending more than $4,728,000 last year and this year for plant additions, more money than it had spent for improvements in the previous decade. Company attorneys, in effect, attributed a commercial gas shortage to the company's source of supply, the Southern Natural Gas Company of Birmingham, which pipes the fuel from Louisiana and Texas.

The commission at the recent hearing recommended that the company, which serves Atlanta, Macon, and Rome, be required to pay a penalty of $18 per thousand cubic feet of undelivered gas to large consumers.

Illinois

Traction Merger Delay Threatened

FURTHER litigation that may hold up the promised purchase of the surface and elevated lines by the Chicago Transit Authority became a possibility early this month when Attorney William R. Morgan notified lawyers for traction interests that he would seek to have held invalid the franchise granted by the city to the authority.

The new development came soon after the authority had accepted a check, drawn by the banking syndicate that marketed the authority's $105,000,000 bond issue, for $2,100,000. The sum had been agreed to as "earnest money," to be forfeited if the whole amount were not ready when the bonds are, about September 30th.

Morgan's notice said he would present to Judge Michael L. Igoe of the Federal District Court on September 10th his petition asking that the new franchise be declared dead and the ordinance franchise of 1907 be held still in effect. He represents class B bonds of the surface lines, which were made worthless in the authority plan.

Gas Heat to Be Denied

MORE than 30,000 persons who have asked the Peoples Gas Light & Coke Company to furnish them gas heating for homes this winter are doomed to disappointment, it was reported recently by B. W. Kokum, gas engineer for the state commerce commission.

He said the company has sent letters to these applicants, informing them the

service cannot be furnished within a "foreseeable time" and that the supply must be husbanded to care for cooking and water heating, which are kept available for all. He said the firm had been able to grant new space heating for fewer than 2,000 homes this year.

In general, the heating gas is being installed for those who applied before July 1, 1946. In some "hardship cases" applications of a later date have been filled. Kokum said gas is cheaper at present rates than oil, and he attributed the rush for gas to this factor.

Kentucky

Ban on Gas Equipment Dissolved

LIMITATIONS on installations of gas space-heating equipment were lifted on September 3rd when Circuit Judge William B. Ardery signed an order dissolving the temporary ban he had placed in effect on July 25th.

At the same time, attorneys for the four gas companies attempting to limit gas sales to present customers only said it was "only fair to warn the public" the decision may not be a final one.

In further attempts to have the restrictions reimposed, the gas companies divided into two groups to follow two legal avenues open to them.

Two utilities, Louisville Gas & Electric Company and Frankfort Natural Gas Company, told Judge Ardery they would not go to the court of appeals. They indicated they would ask the state public service commission to reconsider its unanimous decision of July 22nd lifting all gas heater restrictions.

The other two, Central Kentucky Natural Gas Company, Lexington, and Union Light, Heat & Power Company, Covington, asked for and were granted the right to appeal Ardery's refusal to continue his restraining order in effect.

Ardery on September 1st refused to approve an agreed judgment offered by the commission and the utilities which, he said, was "absolutely counter" to the commission's July 22nd decision, before him on the utilities' appeal. He ordered the case sent back to the commission and said he would review it when the commission "makes up its mind."

Nominee Calls Plan "Vicious"

ANY legislation similar to that contained in the controversial Moss Bill, the so-called anti-TVA Bill, faces a veto if passed by the state legislature, if Eldon S. Dummit is elected governor in November. The Moss Bill would have established a formula for acquisition by municipalities of privately owned electric systems.

Attorney General Dummit, Republican nominee for governor, when questioned about his stand on the measure recently, termed the Moss Bill "vicious, and probably unconstitutional." He said if any similar bill is passed by the legislature next year, and if he is in the governor's chair, "I will veto it."

The Moss Bill, sponsored by Senator Ray B. Moss, Pineville Republican, would have amended the state law giving cities the right to acquire electric systems by prohibiting a city from building a system of its own and setting up a formula it would have to follow in buying an existing system.

Massachusetts

Public Buys Boston Elevated

THE Boston elevated railroad system, which carries about a million commuters daily, passed from private to public ownership recently. The newly created Metropolitan Transit Authority

paid $20,297,490 in cash to the directors of the Boston Elevated Railway Company for the system.

As a result, the residents of 14 greater Boston cities and towns now own the property and franchises of the "El" along with its troubles.

The way for the sale, which was agreed upon some weeks ago, was cleared when Denis W. Delaney, collector of internal revenue, announced that a $3,489,560 lien against the system for back taxes from 1940 to 1943 had been discharged by the Federal government pending settlement of a dispute as to the amount to be paid.

The purchase has been under negotiation for some time, with threats of various kinds of suits causing delays. Yet to be settled were labor conditions under which "El" employees are to work now that they are employed by the public, pension funds, and other such considerations.

Michigan

Utility Surveys Ordered

INDEPENDENT surveys of utilities that serve Michigan and collect millions of dollars a year in rates set by the state public service commission were ordered by Governor Sigler early this month. He instructed the commission to strengthen the technical staff with independent, unbiased experts before the next rate hearings.

Among the first on the docket will be the $10,000,000 increase asked by the Michigan Bell Telephone Company.

Stuart B. White, chairman of the commission, told Sigler that only 7 out of 28 of the larger utilities have ever been independently surveyed by the commission. He explained that his investigation revealed that the commission has had to depend upon information supplied by the utilities which were being regulated.

The governor declared that the addition of the state's own experts could save utility customers large sums of money through adequate presentation of all pertinent facts.

Missouri

Protest Filed on Service Limit

A SERVICE rule of the Laclede Gas Light Company of St. Louis, permitting it to reject new applications for space heating and to curtail industrial gas service because of an expected natural gas shortage in the 1947-48 heating season, was attacked as "discriminatory and unlawful" in a complaint filed on September 2nd with the state public service commission.

The complainant, the Automatic Firing Corporation, asked the commission to rescind its order of last April approving the service limitation rule, and to require Laclede to desist from enforcing the rule.

The Automatic Firing Corporation, which manufactures and sells gas-heating equipment, asserted there was no valid justification for the limitation in St. Louis county. It alleged the Laclede Company intended to divert part of the gas supply, which should be available for St. Louis county customers, to gas customers in St. Louis.

Under the regulation, Laclede is authorized to refuse to supply gas service for space heating to customers whose applications for such service had not been accepted by Laclede prior to last April 23rd.

Phone Rate Boost to Be Sought

SOUTHWESTERN BELL TELEPHONE COMPANY plans to apply to the state

public service commission for certain rate increases, St. Louis city officials were told recently by Clifford G. Wassall, district manager of the company. Wassall said the increases would be calculated to add $2,000,000 to the company's annual revenue in Missouri.

Wassall said the schedule of increases to be proposed had not been decided on, but that it was not planned to increase the basic rates to household patrons in St. Louis or Kansas City. Long-distance rates and charges for special services will bear the chief advances, he said.

Wassall said it was planned to seek similar increases in the other states served by Southwestern Bell, Kansas, Arkansas, Oklahoma, and Texas, and a part of Illinois. He said the application to the Missouri commission probably would be made about October 15th.

Increased costs of operation have outstripped the increases in the company's revenue, the Bell representative said.

New Jersey

City Loses Tax Decision

NEWARK early this month lost the decision in its attempt to assess intangible personal property of Public Service Corporation at $3,313,200 for each of the years 1943, 1944, and 1945.

The state division of tax appeals announced it had reduced the assessment for 1943 to $36,950, for 1944 to $77,874, and for 1945 to $91,667. Earlier, the Essex County Tax Board had reduced the assessments to about one-third of Newark's figure, but the corporation carried the appeal to the division of tax appeals.

The division canceled assessments on interest received from United States Treasury notes and bonds and also assessments on redeemed perpetual interest-bearing certificates of the coporation amounting to $1,020,223.

Earlier the county board had upheld the assessments on the redeemed certificates.

Oregon

Transit Fares Increased

THE city council early this month unanimously adopted recommendations of Commissioner Dorothy McCullough Lee to give Portland Traction Company, on a contingent basis, the higher fare structure of 10 cents for single rides, 11 tokens or tickets for $1, and $1.40 for the weekly pass.

The contingency is that the company must have ordered by next April 1st, or pledged the council it will buy before next July 1st, $1,500,000 worth of new motor coaches (or 75 coaches, whichever represents the lesser expenditure) in addition to the 100 gas busses and 50 trolley coaches now either delivered or in process of manufacture.

Should the company fail in this, the fares will revert to 10 cents for a single ride, three tokens for 25 cents, and $1.25 for the weekly pass, on April 1st, unless otherwise provided by the council.

The company had asked for 10 cents a ride, abolition of the 8⅓-cent tokens, and $1.50 for the pass.

Rhode Island

Rate Hearing Recessed

PUBLIC hearing on the proposed new telephone rates was recessed recently until October 6th, with the possibility that the new rates might go into effect before the hearing is resumed.

Horace P. Moulton of Boston, chief counsel for the New England Telephone & Telegraph Company, said the company had reached "no decision" on whether it would file a new rate petition before October 3rd. Unless it does, the new rate schedule, which will boost rates in Rhode Island about 18 per cent, will automatically become effective on October 3rd.

Public Utility Administrator Thomas A. Kennelly, before whom the hearing was being held, suggested at the opening session of the hearing last month that the company file a new petition. He intimated at that time that since state law permitted suspension of new rates for three months—in the telephone company case from July 3rd to October 3rd—the higher phone rates would become effective October 3rd; and he reiterated that position recently, after declaring a recess upon conclusion of direct testimony by company witnesses.

South Carolina

Merger Negotiations Revealed

NEGOTIATIONS are in progress looking to the consolidation of the Charleston and Columbia utilities, it was revealed this month by S. C. McMeekin, president of the South Carolina Electric & Gas Company, of Columbia.

The negotiations were being carried on by officials of the Columbia company with the Commonwealth & Southern Corporation, of New York, owner of the Charleston utility.

Mr. McMeekin said a successful consummation of the proposed consolidation "would provide the service areas of the two companies with the strongest power resources in the Southeast."

He pointed out that the area would be flanked by the big steam generating plant at Parr, north of Columbia, and the new steam plant at Charleston.

Washington

Wanted in PUD Deal

A TACIT invitation to the cities of Seattle and Tacoma to join public utility districts in purchase of Puget Sound Power & Light Company properties was included in a report on September 5th by Bert L. Heggen on behalf of the 15 associated PUD's.

Heggen, Skagit County PUD commissioner, heads the association of districts interested in the purchase plan.

Announcing the results of the previous day's general conference of PUD commissioners with Guy C. Myers, their fiscal agent, and engineers and lawyers, Heggen, in a prepared statement, expressed "hope . . . that the cities of Seattle and Tacoma will coöperate with the districts."

Heggen added that representatives of the districts were instructed to prepare a new purchase plan. This will replace the plan recently invalidated by the state supreme court, under which the Skagit PUD would have acted as agent for all districts. The new plan, like the former one, will provide for acquiring, not only the Puget Sound's distribution systems, but also its generating plants and transmission lines, Heggen said.

He commented that Federal ownership of all generation facilities in the state would put power rates within the control of Congress and added:

> Low-cost power is vital to the economic future of Washington, as is being demonstrated by the movement of certain kinds of industry to this state. The way to be certain that rates are kept low is for the local public to own the producing plants.

Myers said officials of Puget Sound Power & Light would continue coöperating on any plan for a complete "take over" of company property.

The Latest Utility Rulings

Municipal Plant Service beyond City Limits Is Subject to Regulation

THE court of appeals of Kentucky holds that the state commission has jurisdiction over municipal plant activities beyond city limits. Therefore the remedy for objectionable rates in such areas is not the granting of authority for competing service but an investigation of municipal plant rates.

About 45 per cent of the customers of the city of Olive Hill (operating a municipal electric plant) reside outside the city. Last year some of these patrons complained to the commission against rates charged. The commission, after an investigation, held that the city was without authority to purchase electricity at wholesale and distribute it outside its limits. The commission ordered the city to discontinue this service as soon as a coöperative and a power company should construct lines to serve these patrons. Certificates of convenience and necessity were granted for that purpose.

The court agreed with the city that the commission's powers are purely statutory and limited to the regulation of rates and service of utilities. It follows that the commission is without jurisdiction to determine that the city has no legal right or authority to supply patrons beyond corporate limits and to order it to cease doing so. This was said to be a question for a court of original jurisdiction and not the commission.

When the city supplied current outside its limits its exemption from regulation as to rates and service by the commission ceased; and, according to the court, the city came within the jurisdiction of the commission and was subject to regulation by it. This being true, the commission should have required the city to make its rates reasonable and its service adequate rather than to have granted authority for others to enter the field in which the city was operating. The court said:

> The manifest purpose of a public service commission is to require fair and uniform rates, prevent unjust discrimination and unnecessary duplication of plants, facilities, and service and to prevent ruinous competition.

Olive Hill v. Kentucky Public Service Commission et al. 203 SW2d 68.

Application of Fuel Clause to Small Domestic Electric Users Disallowed

A PROPOSAL to extend a fuel clause to apply to all domestic electric users over the initial $1 step was disapproved by the Massachusetts Department of Public Utilities. It was ruled that even if figures as to net income were right, if the company's earnings were further diminished by an amount representing the loss through absence of the fuel clause on the domestic electric rate, it

would still realize net earnings on its combined operations of better than 8.8 per cent on capital stock plus premium. Earnings would be available for interest and dividends of nearly 7 per cent on depreciated plant account.

The outstanding feature of the company's evidence was the introduction of accurate cost analysis figures. The competitive aspects of the gas business were forcibly brought out. While it was conceded that it is unnecessary, and in many cases undesirable, that a rate schedule be designed slavishly to follow costs, since many other factors must be considered, it was equally apparent that the respective class rates must be such that each class will pay its own costs. Consequently, it was ruled, where the facts show that gas service is being supplied at the expense of electric users, it is necessary to revamp the rate structure to minimize this anomaly. The department said:

> Generally speaking, a very high percentage of the customers of any combination company are users of both gas and electricity. Where, however, as is the case with the Lynn Company, both types of service are not supplied in all portions of the company's territory, it is doubly apparent that it is the company's responsibility to fix rates on both types of service so that neither will be a burden on the other.

It was further held that electric customers using less than thirty kilowatt hours per month should pay a reasonable charge for the availability of such service. *Re Lynn Gas & Electric Co. (DPU 7642).*

Good Service Required to Avoid Competition

THE North Carolina commission gave notice to a telephone company that unless within ninety days a definite statement should be filed giving assurance that the company would supplant the present magneto system with a modern type, without undue delay, the commission would consider an applicant who desires to install such service.

The commission understood that subscribers not only desired a modern plant and service, but that there were those in the community who stood ready to install such a system if the present owners would not do so. The commission said:

> The law is plain that where a utility is not giving the type of service desired by its customers and gives no assurance that it will supply the type of service desired, it becomes the duty of this commission to grant a certificate of convenience and necessity to an agency which upon application will agree to supply the desired service.

The matter was before the commission on an application for an increase in rates. Opponents frankly stated that their chief concern was not the question of rates but the matter of service. The commission was opposed to any appreciable increases in rates but concluded that certain inconsistencies should be adjusted. *Re Polk County Telephone Co. (Docket No. 3923).*

Not Only Revenue Need But Reasonableness of Rates Must Be Shown

THE New York commission authorized a temporary increase in gas rates upon a showing that there had been an increase in wages and prices of material but criticized the company for failing to show that the proposed distribution of increased costs among service classifications and rate blocks in each one was just and reasonable.

The public service commission said:

> The question before the commission in all of these cases is not alone whether the company is entitled to increased revenues but whether the new schedules which they propose are just and reasonable. The burden of proof established by law is not limited to the proof that increased revenues are needed but that the rates to be paid by the public are in themselves just and reasonable. In practical-

ly every case, the company has completely failed to meet the statutory requirements and, generally speaking, they have made no effort to go beyond the need for more revenues. Consequently, the commission has no alternative but to provide for temporary rates which will produce increased revenues and give the companies further opportunity of meeting the statutory burden of proof and through our own staff make an analysis of the company costs to determine to what extent the alleged increases prove to be needed by actual experience and how the increased revenues should be raised.

Re Brooklyn Borough Gas Co. (Case 12994).

Police Request Supports Phone Discontinuance For Gambling

DISCONTINUANCE of telephone service, at the request of the chief of police of Trenton, New Jersey, was upheld by the New Jersey Board of Public Utility Commissioners. The request stated that there was reasonable cause to believe that the service was being used for bookmaking.

Police testified as to the gambling reputation of the subscriber and visits by individuals reputed to be gamblers. They did not, however, observe these persons engaged in any illegal activities on the premises. Witnesses had overheard telephone conversations in which the names of horses were mentioned and prices given, indicating an interest in bets and horses. The police did not find any evidence of bookmaking on the premises, such as slips, racing forms, or other paraphernalia.

The board concluded that the company was justified in discontinuing service under its rule that facilities and services might be terminated upon objection to their continuance made by or on behalf of any governmental authority.

But, since the police were unable to obtain sufficient evidence to make an arrest for bookmaking or to justify affirmative action, the board concluded that further deprivation of service was not warranted. *Clethero v. New Jersey Bell Telephone Co. (Docket No. 3294).*

Rates Not Tested by Return on Fair Value

A MUNICIPALITY'S complaint against existing telephone rates was sustained by the Wisconsin commission, which ruled that the rates were excessive and prescribed a new schedule. The commission discussed the development of the "fair-return-on-fair-value" formula and said that this method had been renounced by the United States Supreme Court.

Rate making was described as price fixing through the exercise of the police power of government. Theories as to relationship of profit to value in rate determination were dismissed with this ruling:

> Consequently, as we view it, the relationship between the net profits which any rate schedule will afford and whatever might properly be substituted for fair value as the proper equivalent of a rate base (whether or not expressed percentagewise as a "rate of return") no longer constitutes a valid test as to either the legal validity or the reasonableness of the rates specified in that schedule. We do not mean that such a relationship is without importance or value in determining or viewing the reasonableness of utility rates. But it does not constitute the sole criterion as to either the legality or the reasonableness of such rates, and is merely one among several other facts which are properly considered by regulatory authority in arriving at rates that are, on the whole and in view of all relevant facts as shown, reasonable.

The commission, however, made it clear that it did not believe that fair utility rates could be arrived at by guesswork or the mere application of an intuitive sense of justice. The commission enumerated the following considerations as affecting its determination:

(1) An estimate of the reasonable future

cost incurred in the furnishing of such service as the public may reasonably be expected to demand from the utility here involved.

(2) The value of any class of that utility's service, where that value constitutes the limitation upon and practical equivalent of the rates charged therefor.

(3) A reasonable profit which it is proper for the utility to enjoy under all relevant facts and circumstances.

Sound regulation of utility rates, the commission opined, should include a recognition of the fact that a reasonable share of savings resulting from economic and efficient operation should inure to the utility as an incentive.

The fact that, subsequent to the filing of the city complaint, an investigation was begun of rates in force throughout the entire system was not considered an adequate reason for delaying a city-wide rate reduction until the system-wide matter was determined. *City of Two Rivers v. Commonwealth Teleph. Co. (2-U-2009).*

Experimental Air Transport Operation Disapproved

AN air carrier's application for an amendment to a certificate of convenience and necessity which would permit the carriage of persons in addition to property and mail was denied by the Civil Aeronautics Board, even though the proposed service would provide substantial time saving to potential travelers.

The board considered the operation from both economical and technical standpoints and scored the experimental nature of the proposed operation with this statement:

The board in the past has authorized air transportation services which were experimental in their economic aspects, but has consistently taken the position that it would be contrary to the public interest to authorize experimental services where passenger safety was directly involved. The type of operation contemplated by the present applicant requires frequent descents to low altitudes for property and mail pickups which would expose passengers to hazards which do not attend the operation of conventional aircraft.

Re All American Aviation, Inc. (Docket No. 2366).

Intercompany Claims Settled in Simplification Proceeding

THE Securities and Exchange Commission approved the second part of a simplification plan filed by the North American Company, subject to certain conditions. This portion of the plan provides for dissolution of North American Light & Power Company, an intermediate holding company, and for termination of claims between the two companies.

Although the settlement of the claims had not been negotiated at arm's length, the commission felt that it could pass on the fairness of the plan. A provision terminating the claims asserted by public stockholders of the subholding company against the parent corporation by cash payment by an amount exceeding the *pari-passu* break-up value of their shares was disapproved, but the plan was approved on condition that it be amended to provide for alternative distribution of portfolio stock of the subholding company.

In considering the value of the intermediate holding company's assets, the commission observed that fair market value of the securities is not the primary criterion. This was believed to be particularly true here. There was no requirement that the company's assets be converted into cash. The public stockholders could be given portfolio securities in satisfatcion of their claims and thus avoid necessary financing costs.

North American set up certain defenses against its subsidiaries. It contended that the claims were barred by delay, that the commission had no jurisdiction to entertain the claims, and that it did not control the subsidiary when the act complained of took place. Con-

cerning these defenses, the commission said:

> Thus, when we come to consider the conflicting contentions regarding intercompany claims such as are here involved, we do not approach them as though they were in issue in a suit for damages; we weigh them as integral elements of the "bundles of rights" of the respective claimants in order to determine whether the plan achieves a fair and equitable distribution. What we are basically concerned with here is the participation to be accorded each group of security holders in the enterprise, and the claims and defenses asserted are significant in measuring the extent, if any, to which such participation should depart from the norm of *pari passu* treatment. So the fact that certain stockholders may not have acquired their securities prior to the time of the acts they complain of will not *ipso facto* preclude our examination of such acts. In a proceeding such as this we do not believe that the standing or lack of standing of the claimants to raise a particular contention under strict rules of law applicable to derivative suits, or the imposition of technical defenses which might bar a stockholder's derivative action, should be permitted to foreclose consideration of the substantive merits of the contentions. In fact, we think that, even apart from any such contentions on the part of particular security holders, we have an affirmative obligation to look at all factors in the company's history which might tend to shed light on the fair and equitable treatment of claims to participation asserted in a reorganization under § 11(e).

Re North American Co. et al. (File Nos. 59-10, 54-82, 59-39, 54-50, Release No. 7514).

Authorization of Cab Competition Sustained

THE Pennsylvania Superior Court dismissed a motor carrier's appeal from a commission decision authorizing a competing taxicab operation. The commission, held the court, has the authority to determine whether existing transportation facilities are adequate, can be made adequate under its direction, or whether the public interest requires a competing service.

The court overruled a contention that it was improper for the commission to authorize competition after it had ordered improvement in existing service with which order the carrier had attempted in every way to comply. The order to improve service, the court ruled, did not guarantee a continuance of the monopoly. *Yellow Cab Co. of Pittsburgh v. Pennsylvania Pub. Utility Commission.*

Reciprocity Considered in Award of Foreign Carrier Permit

THE Civil Aeronautics Board, in approving a foreign air carrier's request for authority to operate between United States and the Netherlands, took cognizance of the fact that the carrier's service was the only available service between the United States and the Netherlands over the proposed route other than American flag service. The board found that the United States public was making substantial use of the service and that the carrier was fit, willing, and able to carry out the service.

The board's approval was based also on the reciprocal air transportation interest existing between the United States and the Netherlands in view of the latter nation's grant to American carriers of permission to engage in service between United States and the Netherlands and points beyond. *Re K.L.M. Royal Dutch Airlines (Docket No. 2984).*

Firm Gas Contract Changed

A SUPPLEMENTAL agreement filed by the Panhandle Eastern Pipe Line Company providing for a variable decrease in the volume of gas which the company must deliver to Ohio Fuel Gas Company, although providing for a

change in firm service without a corresponding change in charges, was permitted by the Federal Power Commission to become effective. There was a pressing emergency supply situation on Panhandle's system, which required an immediate determination of gas requirements of its customers, and the change was put in effect for a temporary period. *Re Panhandle Eastern Pipe Line Co. (Opinion No. 152, Docket Nos. G-807, G-620).*

Other Important Rulings

THE Montana commission held that a railroad rate reduced for competitive reasons does not constitute a proper basis of comparison to determine a maximum reasonable rate. It further held that where a rate on a finished product has been reduced by competition, the rate on the raw product may exceed the usual percentage of the rate on the finished product. *Unity Petroleum Corp. v. Great Northern R. Co. (Docket No. 3522, Order No. 1925).*

The Pennsylvania commission modified its order that a heating utility operate for an additional heating season before abandoning operation and permitted immediate discontinuance of service where operations would be at a serious financial loss. *Re Wynnefield Steam Heat Co. (Application Docket No. 67614).*

The application of an air carrier for authority to suspend service to a city whose landing facilities were inadequate for a new type transport put in use by the carrier was approved by the Civil Aeronautics Board where it appeared that the hardship to the community losing service would be counterbalanced by the advantages that other communities would receive as a result of the improved service made available to them through the use of the new transport. *Re National Airlines.*

The Civil Aeronautics Board, in approving an application for a foreign air carrier permit, considered mutual trade interests between the United States and the foreign country involved and the obligations of reciprocity owed the foreign country by our government. *Re Peruvian International Airways (Docket No. 2334).*

The Pennsylvania Superior Court, in dismissing a church's appeal from a commission order approving the widening of a grade crossing in the vicinity of a parochial school, ruled that this was an administrative matter on which the commission ruling would not be disturbed unless it appeared arbitrary, capricious, or violative of constitutional rights. *St. Peter's Roman Catholic Congregation v. Pennsylvania Pub. Utility Commission.*

The Pennsylvania commission would not permit purchasers of railroad property to intervene in a proceeding brought by the trustees of the railroad to obtain authority to abolish grade crossings, notwithstanding the fact that one of the terms of sale required the purchasers to carry out any commission order in relation to grade-crossing elimination. *Re Buchanan et al. (Application Docket Nos. 69550, 69551).*

The Civil Aeronautics Board in considering several applications for authority to establish local air routes conceded that in such matters the advice and assistance of the communities involved should be given much weight. The board, however, stressed the interstate character of air transportation and concluded that the establishment of local routes should be done on an interstate basis. *Re North Central Case (Docket No. 415 et al.).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

PREPRINTS

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Points of Special Interest

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TITLES

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Mississippi River Fuel Corporation

v.

Federal Power Commission et al.

No. 9181
— US App DC —, — F2d —
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REVIEW *of order of Federal Power Commission fixing rates for natural gas pipe-line company; reversed in part and remanded. Petition for rehearing denied July 28, 1947. For Commission decision, see (1945) 4 FPC 340, 63 PUR NS 89.*

Rates, § 645 — Scope of proceeding — Return question.

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Apportionment, § 21 — Commodity cost.

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7. The Federal Power Commission in the apportionment of demand costs among customers of a natural gas company, has wide power in the selection of formulae for the ascertainment of costs, p. 136.

Appeal and review, § 28.1 — Cost allocation by Commission — Scope of review.

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Apportionment, § 31 — Gas demand costs — Use of system peak day.

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Apportionment, § 31 — Allocation of demand costs — Firm and interruptible customers.

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Apportionment, § 10 — Demand costs — Interruptible customers.

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Apportionment, § 4 — Use of formula — Departure from established concepts.

13. The Commission, in allocating costs of a natural gas company between demand and commodity, is not bound to the established demand-commodity formula, but if it chooses to depart from the established definitions of the factors which comprise the formula, it cannot say that its allocation is proper merely because the named formula is proper; when the Commission purports to act upon the exercise of informed judgment, apart from established criteria, it must make clear and complete the findings and the reasons which lead to its conclusion, p. 141.

Apportionment, § 10 — Allocation of costs — Definition of "demand cost."

14. Definition of "demand cost" of a natural gas pipe-line company as costs which vary with the demands made on the pipe-line capacity is a clear departure from recognized definition and is ambiguous; demand made is for gas to be delivered, and the demand which fixes the minimum to plant capacity is the right to demand, adjusted by a diversity factor; this is the meaning of "demand" in the recognized demand-commodity formula, and it does not vary with demand actually made, p. 142.

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Evidence, § 18 — Support for Commission findings.

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Depreciation, § 6 — Right to correct allowance.

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Apportionment, § 15 — Supervision and engineering costs.

19. Supervision and engineering cost of a natural gas pipe-line company, if incurred for the purpose of supervising expenditures, may be allocated between demand and commodity costs, but if the cost is a fixed cost related only to the plant itself, it would not seem to have commodity characteristics, p. 148.

Apportionment, § 15 — General and administrative costs.

20. Allocation of general and administrative costs between regulated and nonregulated business of a natural gas pipe-line company upon the basis of supervised expenditures, exclusive of gas purchased, is a reasonable principle and within the discretion of the Commission, p. 148.

Apportionment, § 31 — Demand and commodity costs — Return.

21. Allocation of return, half to demand and half to commodity, in the case of a natural gas pipe-line company, is an established treatment of this item; return earned is a function of the volume of sales as well as of demand, p. 149.

Appeal and review, § 62 — Grounds for reversal — Defective findings — Cost allocation.

22. An order of the Federal Power Commission as to allocation of costs as a basis for fixing natural gas pipe-line rates should be reversed and remanded with instructions that the Commission make clear its formula or method used in ascertaining costs of regulable sales and that it make find-

ings of fact based upon substantial evidence in the record upon which it makes its allocation of items, when the Commission, after announcing the applicability of a formula, has distorted its application by failure to find accurately the factors required by the formula or by departing from the essential progress of the formula from premise to conclusion, p. 149.

Appeal and review, § 28.4 — Scope of review — Commission rate order — Basis for rates.

23. The court, in reviewing a rate order of the Federal Power Commission, is not required to examine the rates per se, as an abstraction, or as a naked economic fact, divorced from the elements of which it is composed and regardless of its effects, p. 151.

Rates, § 143 — Reasonableness — Cost basis.

24. The character of a rate (whether fair, reasonable, and nonconfiscatory) is not an abstract economic concept of the proper price to be paid by consumers for a commodity or service, but the character of the rate is determined by its relationship to a number of components, the principal components being expenses of operation, allowance for depreciation or depletion, and a proper return to the company, p. 151.

Return, § 52 — Reasonableness — Confiscation.

25. A rate yielding no more than the sum of operating expenses, allowance for depreciation or depletion, and a proper return is fair and reasonable, and if it yields that sum, it is nonconfiscatory, p. 151.

Appeal and review, § 28.4 — Allocation of costs — Review of rate order.

26. A reviewing court has power to inquire into a challenged refusal to include certain expenses in the computation of a prescribed rate, and when the court examines allocations of costs it is examining the end result of the prescribed rates, because one phase of the end result is that the rate must yield enough revenue to meet all proper expenses, p. 152.

Return, § 52 — Confiscation — Inadequacy of rates.

27. A rate order which does not provide for proper allowable expenses, taxes, depreciation, and return is unfair, unreasonable, and confiscatory, p. 153.

Appeal and review, § 15 — Functions of court and Commission.

28. A court reviewing a Commission must prevent the Commission from being arbitrary, although the court, unlike the Commission, may not be an expert body, p. 153.

APPEARANCES: William A. Dougherty, with whom Max O'Rell Truitt and James Lawrence White were on the brief, for petitioner; Charles E. McGee, Assistant General Counsel, Federal Power Commission, of the Bar of the State of New York, pro hac vice, by special leave of court, with whom William Bradford Ross, General Counsel, Federal Power Commission, and Alvin A. Kurtz, Attorney, Federal Power Commission, were on the brief, for respondent Federal Power Commission; Milford Springer, Principal Attorney, Federal Power Commission, also entered an appearance for respondent Federal Power Commission.

Before Groner, CJ., and Clark and Prettyman, JJ.

PRETTYMAN, J.: This is a rate case and is before us on a petition to review and set aside an order of the Federal Power Commission, 4 FPC 340, 63 PUR NS 89.[1] Petitioner is a natural gas pipe-line company.

[1–3] Petitioner's first point relates to the 6 per cent rate of return found by the Commission to be reasonable. It claims that this finding does not accord with the precepts of fair play, because, it says, the whole hearing procedure was upon an assumed 6½ per cent rate of return, and a 6 per cent rate was first mentioned in the principal brief of Commission counsel before the Commission. It further says that in eleven prior natural gas cases since the Natural Gas Act was passed, 6½ per cent was allowed, and that the general financial picture as to utilities has not changed since those cases. It further says that the finding as to the rate of return is not based upon substantial evidence and that the Commission did not consider the evidence of petitioner on the point.

The order of investigation which inaugurated the proceeding, and likewise the order setting the hearing, recited that the inquiry would concern petitioner's rates and charges. This was sufficient notice that the rate of return would be considered. At the hearing, both the Commission staff and the company introduced evidence upon the matter. That produced by the Commission staff included voluminous economic and statistical data. That evidence showed that the price of long-term money generally, and similarly such costs to utilities, including natural gas companies, had declined in the period preceding the test year 1943 used in the case at bar. The earnings-price ratios of common stocks of natural gas companies held by the public were, so far as this evidence showed, in some cases up and in some cases down between 1937 and 1943, and no general pattern in that respect is discernible. Those ratios varied in 1943 from 7.29 per cent to 29.71 per cent, and the trend between 1937 and 1943 varied, among companies, from a decline of four points to an increase of eighteen points.

We have examined the eleven cases to which petitioner refers. Four of them were consent orders. Two companies had common stock only. One had $8,000,000 of 5½ per cent debentures outstanding against a rate base of $48,000,000, the balance being represented by common stock. Another had about half its rate base represented by long-term debt of which the cost was 2.88 per cent, and a little less than a fourth represented by preferred stock at 5.86 per cent. In another, the Commission based its 6½ per cent allowance upon a theoretical capitalization of 40 per cent bonds at 3½ per cent, 20 per cent preferred stock at 5¾ per cent, and 40 per cent common stock at 8 per cent. All of those cases were decided in 1943 or earlier and rested upon data antedating that year. The great differences between the financial circumstances in those cases and in this create a wide difference between the over-all rate of return allowable in so far as the court is concerned.

Under the rule laid down by the Supreme Court in the Hope Natural Gas Company Case,[2] the court is re-

[1] Section 19(b) of the Natural Gas Act, 52 Stat 933, 15 USCA § 717r(b).

[2] Federal Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 88 L ed 333, 51 PUR NS 193, 64 S Ct 281.

stricted in its review of a Commission rate of return allowance to a test of the end result of the order and, of course, the adequacy of the findings and the sufficiency of the evidence supportings the findings. About half of the capital of this petitioner is represented by 2½ per cent long-term notes and the other half by equity capital. From the standpoint of the cost-of-capital rule, the 6 per cent rate of return allowed would meet the obligation of the 2½ per cent notes and allow about 9½ per cent on the common stock and surplus. The record does not furnish any other statistical test of the end result of the allowance on the equity capital. The average yield of electric utilities on common stock for 1943 was found to be 7.3 per cent, and the evidence shows that natural gas companies are regarded by the public as less desirable and therefore require higher yields. But petitioner does not point to any evidence of the extent of the margin between the two industries in common stock yield requirements. Petitioner asserts certain risks in its business but gives us no statistical measure of those risks by which to test the conclusion of the Commission.

Upon this evidence we cannot say that the rate of return allowed by the Commission was beyond the limit of its power, either as unreasonable, insufficient, or unsupported by substantial evidence.

Petitioner's next point relates to the determination of certain costs of the company's regulable[3] business. Its business consists in part of the sale of natural gas to public utilities for resale, and in part of sales to industrial consumers. The former part is subject to regulation by the Federal Power Commission; the latter is not.[4] In order to determine fair and reasonable rates for those sales which are under its jurisdiction, the Commission must, of course, determine the costs involved in those sales. This necessitates an allocation of costs as between those sales which are subject to this regulation and those which are not.

[4] The regulated sales in this case, being the sales to utility companies for resale, are easily identified. The problem is to ascertain the costs incurred prerequisite to such sales, and so to be borne by those customers. This is a question of fact. Expenses (using that term in its broad sense to include not only operating expenses but depreciation and taxes) are facts. They are to be ascertained, not created, by the regulatory authorities. If properly incurred, they must be allowed as part of the composition of the rates. Otherwise, the so-called allowance of a return upon the investment, being an amount over and above expenses,

[3] We use the terms "regulable" and "regulated" to refer to regulation by the Federal Power Commission. The other rates are, of course, subject to local or state regulation.

[4] Section 1 of the act:

"(a) . . . it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

"(b) The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas." 52 Stat 821, 15 USCA § 717.

would be a farce. Costs incurred for specific sales are easily assigned to them. But since many supplies are purchased, salaries and wages paid, expenses incurred, and facilities used to serve all customers, it is necessary to apportion such costs in order to ascertain the costs applicable to certain customers. A number of methods are available. One is the demand-commodity method.

There is nothing new or novel about the demand-commodity formula. It has long been used, by both utilities and regulatory authorities, in the composition of rate structures.[5] Customers desire different types of service. If the costs necessitated by the several services differ, different rates are justified, if not required. Functional analyses of costs are therefore made. The cost of each class of service is considered to be the composite of the costs of its functional elements. The basis of the demand-commodity formula is the difference between costs which occur by reason of required plant and equipment capacity and costs which occur directly in the handling of the gas. The company must have the capacity to supply certain demands when made. That capacity must be available whether or not it is being used at any particular moment. Thus, such costs do not vary from time to time but, generally speaking, continue constant, or substantially so. They are demand, or capacity, or fixed costs. Other costs are incurred only when, as and if gas is being made, transported or sold. They relate to the commodity itself. They are commodity, or volumetric, or variable costs. They obviously vary with the sales.

There are three steps in the employment of the demand-commodity method of finding the costs necessitated by the type of service afforded individual users. The first step is the ascertaining of the individual dollar amounts of the various items of cost, i. e., depreciation, taxes, cost of gas, engineering, etc. This is rarely controversial, since it is a routine accounting operation. Second, it must be determined for each item of cost whether by its nature it is a demand cost or a commodity cost, or, if not classifiable wholly in either of these categories, the proportions thereof to be assigned as demand and as commodity. The third step is the apportionment of total demand cost and of total commodity cost to each customer or class of customers—in the instant case, to customers comprising petitioner's regulable business and to those constituting the non-regulable business.

[5] The apportionment of commodity cost among the customers is relatively simple; the proportion of this cost which must be borne by any customer or class of customers is that which the customer's use of gas is of

[5] Colorado Interstate Gas Co. v. Federal Power Commission (1945) 324 US 581, 586–595, 89 L ed 1206, 58 PUR NS 65, 65 S Ct 829; Cities Service Gas Co. v. Federal Power Commission (1946) 63 PUR NS 276, 155 F2d 694, 698, 704, cert. denied, 15 USL Week 3188 (Nov. 12, 1946); Arkansas Louisiana Gas Co. v. Texarkana (1938) 24 PUR NS 267, 96 F2d 179, 185, cert. denied (1938) 305 US 606, 83 L ed 385, 59 S Ct 66; Re White Mountain Power Co. (NH 1937) 18 PUR NS 321, 331; Marinette v. City Water Co. of Marinette (Wis) PUR1926B 362, 373; Re Wisconsin Traction, Light, Heat & P. Co. (Wis) PUR 1919B, 224, 238; Thayer v. Beaver Valley Water Co. (Pa) PUR1916E 962, 1003; Nash, Public Utility Rate Structures (1933) 223–238; Barnes, Economics of Public Utility Regulation (1942) 320–332; Thompson and Smith, Public Utility Economics (1941) 383–392; Nash, Economics of Public Utilities (1931) 259–266, 457–458.

the total use of gas during the period for which the costs have been determined. The commodity cost chargeable to a customer bears the same ratio to the total commodity cost for the period as the amount of gas consumed by him bears to the total quantity of gas sold by the utility to the aggregate of all of its customers during that same period.

[6–9] Apportionment of demand cost among customers is a more elusive problem. The end result must be such that each user will shoulder his share of the cost of providing and maintaining plant capacity. Each customer should pay for the capacity necessitated by his service demands. Various methods of apportionment are available, and these vary considerably in complexity and in the merits of results achieved. One which is not prohibitively complicated and which yields equitable results in many situations has been approved by the Supreme Court in the Colorado Interstate Case.[6] The initial step in its employment is the ascertainment of that day within the test period on which the gas used over the entire system was at its maximum or peak. Then the total demand costs are assigned to individual users accordingly as the total gas sold on the peak day was taken by each. Or, stated differently, the demand cost assignable to each thousand cubic feet of gas sold on the peak day may be found by dividing demand cost by gas sold; then the demand cost to be borne by any customer or class of customers will be the product of thousand cubic feet of gas used by him, or them, on the peak day and the demand cost carried by each thousand cubic feet.

The Commission has wide power in the selection of formulae for the ascertainment of costs. As the Supreme Court has twice remarked, "it is much easier to reject formulas presented as being misleading than to find one apparently adequate,"[7] and the commodity-demand formula has been approved by that court.[8] It is not the function of the courts to select formulae in these matters.

It is also true, and the Supreme Court has held,[9] that judgment and discretion must control in the allocation of costs, because the matter is not an exact science. The discretion which must be exercised is that of the Commission. Congress has confided that function to it. At the same time, Congress has forbidden arbitrary action and has imposed upon the courts a duty of review in that respect. Arbitrary action, if it means anything, means action not based on facts or reason. The discretion and judgment confided in the Commission must be exercised upon facts and for reason. The duty of review imposed upon the courts requires that the facts be found and the reasons stated. Otherwise, the courts cannot determine whether a given action is or is not arbitrary.

The congressional provisions extend to complicated, difficult matters as well as to simple questions. The

[6] Colorado Interstate Co. v. Federal Power Commission, *supra*, note 5.

[7] Groesbeck v. Duluth, S. S. & A. R. Co. 250 US 607, 614, 615, 63 L ed 1167, 1172, PUR 1920A 177, 184, 40 S Ct 38, quoted with approval in Colorado Interstate Co. v. Federal Power Commission, *supra* notes 5, 6, at p. 590, of 324 US.

[8] Colorado Interstate Co. v. Federal Power Commission, *supra* notes 5, 6, at pp. 586–595, of 324 US.

[9] Id. at p. 589.

courts cannot evade their responsibility merely because the subject matter is obscure. And neither can they be required to probe the minds of the agency for unfound facts or unexpressed reasons. The coördination of the two functions of administrative discretion and judicial review requires that the facts upon which the discretion is exercised, and the reasons, be clearly and completely stated. When the matter is complicated, the necessity is greater.

[10–12] Petitioner's first point in regard to allocation concerns the Commission's computation of the percentage of demand costs applicable to regulable sales. It has been noted above that petitioner's business consisted of direct sales to industrial customers and of sales to other utilities for resale to ultimate consumers, and that only the latter were within the jurisdiction of the Commission. Among the industrial customers were some who contracted for gas on a firm basis and who had a right and priority to receive their gas whenever they wanted it. The contracts of others provided that their supplies of gas would be interrupted or cut off whenever it was necessary to do so because of the demands of the firm customers. These interruptible customers, then, were able to receive gas only at such times as there existed an excess of capacity beyond that required to meet firm customers' demands.[10]

The Commission made several computations. The winter season 1943–44 was the period of time from which the data was drawn. The Commission found the percentage of regulable sales to total sales on the following days to be:

System peak day—February 14, 1944	44.98%
Firm gas peak day—January 7, 1944	50.79%
Firm gas peak day—December 16, 1943	54.55%
Firm gas peak period—December 14–17, 1943	53.81%
Average	51.03%

Then the Commission made a computation based on the average of the four days in the peak period December 14-17, 1943. The last computation in the above table was on the total of the four days. The daily deliveries to firm customers during these four days averaged 123,840 thousand cubic feet. The Commission used as the capacity of the line 135,000 thousand cubic feet, and then computed the regulable sales (68,485 thousand cubic feet) on that average day to be 50.73 per cent of the system capacity.

Based on all the foregoing data, the Commission determined that 51 per cent of demand costs were properly assignable to regulable sales.

Petitioner makes several contentions in regard to the foregoing determination. (A) It says that it was error for the Commission to give any consideration whatever to the coincidental, or system, peak day. It says that the use of such day does not test

[10] Petitioner alleged that on at least 250 days of the year 1943 there were interruptions in the gas service to these interruptible customers. Nevertheless, gas sold to interruptible customers comprised a very substantial portion of petitioner's business during that year. Of the 43,035,374 thousand cubic feet of gas sold to all users (excluding 1,691,428 thousand cubic feet sold to one customer, the Crossett Lumber Co.), 13,756,539 thousand cubic feet (or approximately 32 per cent) were delivered to interruptible customers. Furthermore, on February 14, 1944, the system peak day for the heating period 1943–44, of 135,866 thousand cubic feet delivered, 27,269 thousand cubic feet (or approximately 20 per cent) went to these interruptible customers.

to the utmost the interruptibles' liability to curtailment, and that neither does it indicate accurately the relative long-time demands of different firm customers. The company has much in its favor in this contention. The use of "peak responsibility" for the allocation of demand costs has been severely criticized and, we are told by one authority,[11] generally abandoned. It fails to give effect to load factors, diversity factors, and other mathematical expressions of utility characteristics which are fundamental in a precise distribution of costs. But, as we have already said, it is not for the courts to select formulae in these matters, and, moreover, the use of the system peak day (provided the figures are accurate) was approved in the Colorado Interstate Case, *supra*. Upon that authority the Commission might have used the percentage shown for that day (44.98 per cent), which would have been greatly to petitioner's disadvantage. It did not do so. And the ultimate 51 per cent used by the Commission was otherwise indicated as reasonable by the average day of the peak period. The use of the system peak day for the distribution of demand costs may well be a proper subject for further examination by the Commission and the courts in a case in which the facts indicate inaccuracy in the result thus reached.

(B) Petitioner says that it was error for the Commission to use January 7, 1944, as a firm gas peak day. It says that December 16, 1943, was the correct day. But the elimination of the data on January 7, 1944, does not materially affect the result of the Commission's computation, because it happens that the percentage shown for January 7th (50.79 per cent) is about the average (51.03 per cent), and so its elimination does not materially change the average. Moreover, there is some dispute in the evidence as to which was the firm peak day, the company witnesses first using January 7th and then changing to December 16th. The Commission, it will be noted, used both days in its calculation, although, as we have said, its use of January 7th had no effect on the result.

(C) Petitioner says that the Commission erred in using 135,000 thousand cubic feet per day as the line capacity in the last calculation made by it, as above stated. But there was evidence to support the figure. At least two witnesses testified to it, and an exhibit showed that on the peak days of March 3, 1943, and February 14, 1944, the 135,000 figure was actually exceeded in the days' deliveries.

(D) Petitioner says that the Commission erred in that it averaged the gas delivered to firm industrials and to resale customers for the four days December 14–17, 1943, but did not average the total deliveries. It did not compute the relationship between sales for resale and total deliveries. Instead it computed the relationship between sales for resale and line capacity. Thus, petitioner says that the denominator used to compute the percentages was erroneous. It seems to us that an allocation of capacity costs to interruptible customers is reasonable and can reasonably be the excess of capacity over the actual firm peak. It need not necessarily be only the amount of actual deliveries to interruptibles upon the day or in the period

[11] Barnes, op. cit. *supra*, note 5, at p. 328.

when firm deliveries are at the peak. The excess capacity above actual peak use by firm customers was available for interruptible customers, although it was likewise available for unexercised demand. The method does not seem to be the most scientific possible, and there is an inconsistency between this use of capacity and the allocation among firm customers on actual gas taken in a peak time. But, even so, this assignment to interruptibles does not seem to us to be beyond the limits of reasonableness. The Commission did not confine itself to it. There is a difference of opinion upon the point. The staff witness French in the case at bar supported the ratio of relative use rather than the relationship to capacity. But our inquiry is ended if we find that the method used by the Commission is clearly stated, clearly supported by evidence, and reasonable. Even though other computations be also proper, or even better, we cannot for that reason reject the method used by the Commission. In the present case the Commission's result was supported by the other computations in which actual use, rather than capacity, was the denominator.

(E) Petitioner argues against any allocation of demand costs to interruptible customers. But it seems to us proper that they be required to bear the costs of such part of the capacity as is available for them over and above that required to meet actual peak requirements of the firm customers; in other words, that interruptibles should bear such part of capacity costs as are incurred for them. The company (by original inclusion or by subsequent addition) may have provided in its facilities some capacity for the purpose of serving interruptible customers. And, even if the capacity merely meets the maximum potential demand of firm customers, that potential demand may not in practice actually materialize; in other words, the firm customers may not actually use the full capacity required to meet their potential rights to demand, and thus interruptible customers may always be using some plant capacity. That being so, such customers ought in fairness to bear some capacity costs. There was evidence in this record that the company had actually installed some capacity to care for interruptible customers.

In its petition for review in this court, the company says that the percentage of demand costs applicable to regulated sales should be 53 per cent instead of 51 per cent. The narrow margin of the alleged error is an indication of the close approach to accuracy achieved by the Commission even in petitioner's view.

The allocation of demand costs among the several customers is at best an indefinite and unsatisfactory process. No completely scientific method or formula has been devised so far as we are informed. The Commission's findings and conclusions upon the subject are complete and clear. The figures used are supported by ample evidence. The final figure (51 per cent) was indicated by both the average of system peak day, firm peak day and firm peak period, and the average day of the firm peak period measured against capacity. We think it was within the limits of the proper exercise of judgment by the Commission.

Petitioner's next contentions relate to the Commission's classifications of various costs as demand costs or as

commodity costs. Before examining these points in the present record, it is necessary that we note what was done in these respects in the Canadian River Case,[12] to which reference has already been made.

The decision of the Supreme Court in that case is referred to in the Commission's opinion in the present case as authority for the method here used in allocation of costs. In that case the Commission adopted certain exhibits presented by its staff concerning cost allocation, which it said followed principles long recognized and widely accepted. In its opinion it said:

"Therein costs are divided essentially into two groups, fixed and variable. Fixed costs are largely joint costs which do not vary with volume of sales. The total amount of such costs is largely proportional to the maximum demand on the system or system capacity. Accordingly, these costs have been allocated basically in proportion to each customer's responsibility for the peak day demand. Variable costs are largely those that vary proportional to output or volume of sale. Accordingly, these costs have been allocated in proportion to volume of gas purchased by each customer."[13] The Canadian River Gas Company was a production, transmission and distribution company. The petitioner in the case at bar is a transmission company, except for insignificant distribution costs, so that only the transmission data in the prior case is pertinent here. The Commission staff in that case made the following allocations of present interest:

	Volumetric Costs	Capacity Costs
Operation of Compressing System (Labor and Supervision)	$51,173.27	$51,173.27
Depreciation	.....	290,036.61[14]
—of Compressing Station Equipment	48,953.15	.....
Ad Valorem Taxes .	.....	193,777.60[14]
Corporate Taxes	.....	8,103.68
Labor Taxes	.....	11,835.73
Return on Transmission Plant	331,327.14	331,327.14

In his testimony the staff witness explained the basis for the items. He based his allocation of compressor station labor upon his judgment and the fact that "a station that is shut down but available for use carries a skeleton crew which is generally about half of the crew that is necessary to operate the station's full load." His division of the return, one-half to volumetric and one-half to capacity, was upon the basis that one-half of the return constituted the risk element in transmission, and that the risk element should be borne in proportion to the volume handled.

As we have indicated, the Supreme Court approved the action of the Commission in that case.

In the case at bar the staff of the Commission presented a study of the allocation of costs, supported by voluminous data and a statement that careful consideration had been given recognized methods of cost determination, customs of the industry, and special engineering features of the particular property, all to the end that the allocations not result in a distortion of costs either to the benefit of or to the discrimination against any

[12] Re Canadian River Gas Co. (1942) 3 FPC 32, 43 PUR NS 205, aff'd sub nom. Colorado Interstate Co. v. Federal Power Commission, *supra* notes 5, 6.

[13] Re Canadian River Gas Co. *supra*, 43 PUR NS at p. 232.

[14] Figures given are totals of items shown separately in the record.

group of customers. That study and its results bore the approval of the chief of the division of rates and research, and the chief of the bureau of accounts, finance, and rates, of the Commission. It included two methods, one a demand-commodity allocation and the other a straight commodity basis.[15] In the former, the study for 1943 allocated to demand $2,450,744.23 and to commodity $4,704,729,44 of costs, which included expenses, depreciation, taxes and return on the rate base. The study was presented by the Commission's senior rate investigator on the witness stand, and the recommendations on controversial items were probed on cross-examination. He testified that the method used was that used by the Commission in other cases and approved by the Supreme Court in several decisions.[16]

On the items now in controversy the staff made the following allocations:

	Demand	Commodity
Transmission Supervision & Engineering	$44,528.83	.....
Compressor Station Labor	297,738.10	.....
Depreciation	731,863.34	$71,336.33
Taxes other than Federal Income	291,271.71	36,450.88
Return on Rate Base (at 6½%)	445,660.00	445,660.00

The company presented two allocation studies. One of them agreed with the Commission staff on compressor station labor, while the other assigned 25 per cent of that item to commodity because of the casual labor involved. The company studies assigned the great majority of depreciation and taxes other than Federal income tax to demand, thus agreeing with the Commission staff, but they made direct charges to customers of the balances, instead of charging them to commodity.

The Commission rejected all studies on these controverted items, except as to the return on the rate base. It allocated as follows:

	Demand	Commodity
Transmission Supervision & Engineering	$11,702.00	$32,827.00
Compressor Station Labor	.....	297,738.00
Depreciation	401,600.00	401,600.00
Taxes other than Federal Income	158,730.00	158,730.00
Return on Rate Base (at 6%)	411,378.00	411,379.00

[13] Before considering the several controverted items, we note the action of the Commission in respect to the demand-commodity formula itself. The formula and its factors were recited. Then the Commission referred to the fact that certain costs—depreciation, taxes, and return—are "principally" dependent upon capacity. But it concluded that to assign these costs exclusively to demand "because they are proportional to plant and do not vary with the annual volume of gas sales" would be "inequitable" and "manifestly error." Therefore, the Commission concluded, "From the evidence and the exercise of informed judgment, we find that the following classification of cost of service is rea-

[15] The straight commodity basis was submitted without discussion for "information purposes," as one schedule out of the twelve comprising the study for the year 1942 and as one schedule out of the eleven comprising the study for the year 1943. The remaining schedules and all discussion were concerned with the first method of cost allocation.

[16] Colorado Interstate Co. v. Federal Power Commission, *supra* notes 5, 6; Federal Power Commission v. Hope Nat. Gas Co., *supra* note 2; Interstate Nat. Gas Co. v. Federal Power Commission (1946) 65 PUR NS 1, 156 F2d 949, cert. granted on other points, 15 USL Week 3303 (Feb. 10, 1947); Cities Service Gas Co. v. Federal Power Commission (1946) 63 PUR NS 276, 155 F2d 694, cert denied, 15 USL Week 3188 (Nov. 12, 1946).

sonable and proper:" 63 PUR NS at p. 101. In sum, the Commission did not allocate costs according to the demand-commodity formula as heretofore understood, but according to its own definitions and its informed judgment.

It seems evident that formulae have no validity without definition of the factors. A formula is a combination of defined factors which yields a stated result. If the factors comprising the formula be not used, the formula is not used.

The Commission was not bound to the established demand- commodity formula, even though an undeviating pursuit of an established path would lend itself to facility of understanding. It chose in this case to depart from the established concepts; that it, from the established definitions of the factors which comprise the formula. So it cannot say that its allocation is proper merely because the named formula is proper. When the Commission purports to act upon "the exercise of informed judgment," apart from established criteria, it must make clear and complete the findings and the reasons which lead to its conclusion. These costs, as we have said, are facts; they are to be ascertained, not merely allowed by grace. The critical consideration in the present case is whether the classifications the Commission made "From the evidence and the exercise of informed judgment" were within the permitted bounds of its discretion. The court cannot determine that question unless the findings and the reasons upon which the classifications were actually made are clear enough and complete enough to be understood and judged.

[14] In the case at bar, the Commission defined "demand costs" as costs which "vary with the demands made on the pipe-line's capacity." This is a clear departure from recognized definition and is most ambiguous. The formula theretofore established by the Commission and approved by the courts had, as we have seen, distinguished between fixed, or capacity, costs, predominantly proportional to the size of the plant and largely independent of the annual volume of gas sold, and commodity costs, which vary with the annual volume of gas.[17] The Commission now says that demand costs *vary* with the demand. We are at a loss to understand what is meant. If the statement means that demand costs as initially incurred are in amounts fixed by demand requirements, such costs are fixed and do not vary"; that was the former, and approved, definition. If the statement means that this class of costs varies from year to year or month to month, or among customers, according to the demand made in each period or by each customer, it is not accurate; and, moreover, we fail to perceive any essential difference between that and a commodity cost. Demand made is for gas to be delivered, and that certainly is the volume of gas delivered. The demand which fixes the minimum to plant capacity is the right to demand, adjusted by a diversity factor. This is the meaning of "demand" in the recognized demand-commodity formula. It does not vary with demand actually made.

[17] Re Canadian River Gas Co. (1942) 3 FPC 32, 43 PUR NS 205, 232, approved in Colorado Interstate Gas Co. v. Federal Power Commission (1945) 324 US 581, 587, 89 L ed 1206, 58 PUR NS 65, 65 S Ct 829.

The meaning of the new definition of "demand cost" is not sufficiently clear for us to test its validity. Where, as here, the Commission rejects all formulae used in the testimony and those heretofore followed by it and the courts, the nature of the new proposal must be clear enough for the courts to exercise the function of review imposed on them by the statute.

In the course of its discussion of the formula, the Commission says, "Mississippi now contends that all taxes, depreciation, and return should be classified as 'demand charges,' etc. The statement may be literally correct, but it is hardly objective. The Commission was repudiating the recommendations of its own staff. An objective statement would have said so, and not have cast the repudiation in the form of a mere denial of a company claim.

[15] Petitioner does not challenge the propriety of the use of a demand-commodity formula. Its contention is that in classifying costs as between "demand" and "commodity," the Commission completely ignored the facts and so manipulated the costs as to reach an erroneous determination of the costs of the sales subject to its regulation.

The importance of the classification is apparent. The Commission found, as we have seen, that about 51 per cent of the sales during peak periods were to utilities for resale; i.e., were regulable sales. And it found that about 32 per cent of all sales were to those utilities. It, therefore, found it reasonable to allocate 51 per cent of the demand costs to regulated sales and 32 per cent of commodity costs to those sales. So that if a particular cost were classified as a demand cost, 51 per cent of its amount would be included as a cost in the computation of these regulated rates; whereas, if it were classified as a commodity cost, 32 per cent of it would be included. An error in the classification would result in a material distortion of the costs of regulated sales. This is what the petitioner says occurred. The court is limited to the inquiry whether the action of the Commission was arbitrary or was based upon facts and reason. Since the classification of items of cost was the direct control over the amount included in the costs of regulated sales, the Commission could not be arbitrary in that classification, any more than it could be in a simple refusal to include a proper cost.

The principal item to which petitioner objects is the allocation of the cost of compressor station labor in the amount of $297,738. The Commission classified it as a commodity cost and, therefore, allowed 32 per cent of it, or $94,680.68, as a cost of regulated business. If the item had been classified as a demand cost, 51 per cent, or $151,846.38, would have been allowed as a cost of regulated business.

We first examine the evidence in support of the Commission's findings, guided in our examination by the Commission's brief. It directs our attention to the testimony of three witnesses, Shuttleworth, Comfort, and Simonds. The first-named was assistant treasurer of the company in charge of accounting. The testimony cited to us related to an exhibit showing a computation of net income for a hypothetical test year. It showed ad-

justed figures for 1943 and then indicated increases or decreases by items to produce a schedule for a so-called normal or probable postwar year. This test year was supposed to represent the operations of the company after the increases in volume of sales which had come from war business had been eliminated. A decrease in gas revenues was indicated. In respect to compressor station labor in this hypothetical test year, it was stated, both on the exhibit and in the testimony, that it was estimated that there would be a reduction in labor cost in approximately direct proportion to the reduction in sales volume. The statement was not addressed to the problem of allocation but purported to relate to a variation in the total year's expenses. No factual data in support of the bare conclusion was submitted.

The testimony of the witness Simonds which is cited to us by the Commission was directed to a computation of the costs of furnishing gas under a special contract to a customer known as the Crossett Lumber Company. Simonds included in the cost of this gas labor costs in the proportion of Crossett gas to total gas. He commented, "To a degree, the treatment of the $1,904 [labor] is not consistent with the general treatment of Compressor Station Labor," but "the amount involved was, I thought, negligible, and rather than recast it, it was left that way." Pressed on the point in cross-examination, he repeated that the treatment was inconsistent but that the amount involved was negligible. Thus, that part of Simonds' testimony upon which the Commission relies on this point, is not his testimony as to allocation of costs, but was on another matter stated by him to be a deviation from the principles of allocation because of its negligible amount.

The Crossett transaction was described by the witness French, of the Commission staff, as nothing more than a transportation arrangement by which the company bought earmarked gas for resale to the Crossett Company. He made a separate treatment of it, different from his treatment of all other business. The Commission, in a footnote to its opinion, treated the item the same way.

The testimony of the witness Comfort cited to us in the Commission's brief related to an estimate of the costs of operating certain new equipment then being installed. He said that the same kind of engine was already in operation in another station and that he had taken the cost of operating that station "and modified that expense by the different amount of labor that would be required at Perryville [the new equipment]—they wouldn't require quite as much labor or supervision as is given at Crossett [the old equipment]—and also modified by the amount of time that it will operate at Perryville as compared to the operation at Crossett." We fail to find in this testimony, which is the only citation to Comfort's testimony given us by the Commission, any reference to cost of labor being proportional to sales.

We are told by the Commission that "The fact that compressor station labor is proportional to the volume of gas compressed is shown by the following data (App. 974,978):

Year	M Cu. Ft. Sales	Compressor station labor	Cost per M Cu. Ft.
1940	36,532,523	$181,753	0.50¢
1941	42,321,165	234,872	.55¢
1942	44,012,110	263,629	.60¢
1943	45,190,533	297,738	.66¢"

But the table indicates to us the opposite of what the Commission says it shows. The percentage of variation of thousand cubic foot sales and of compressor station labor as shown by the quoted table are as follows:

Year	Percentage of increase in sales over prior year	Percentage of increase in labor over prior year
1941	15.8	29.2
1942	4.0	12.2
1943	2.7	12.9

The variations are obviously wholly different, instead of being the same. The labor does not vary in proportion to the gas sold, so far as the quoted table shows. Moreover, it would seem, in the absence of explanation, that if the labor costs were proportional to sales, the cost per thousand cubic feet would be the same. On the contrary, the table shows an increase in the cost per unit (thousand cubic feet) sold. The Commission says that consideration of wage increases and overtime shows that the average cost per thousand cubic feet is almost exactly proportional to the gas sales. No such computation appears either in the record or in the brief. Only the dollar amounts of average monthly earnings and of wages per day appear in the record, and we are supplied with no factor by which those dollar amounts can be reduced to a common denominator for purposes of comparison.

In its brief the Commission tells us that "the labor cost of operating the engines is proportional to the volume of gas pumped because the operators work when the engines are operating." The generality of the stated premise seems to us no support for the conclusion. Of course, the operators work when the engines are operating. But even assuming that the statement means that the operators do not work when the engines are not operating, and that their pay is in proportion to their "work" in that sense, we are given no reference to testimony in the voluminous record which would support that statement. On the contrary, we find testimony that "regular" employees, in contrast to casual labor, were 55.62 per cent of the total field employees in 1943, which would seem to indicate that more than half the field employees were on some sort of regular payroll. We also find the direct testimony of one witness who said that "I know that when an engine is shut down they do not lay off the man," explaining that some leeway was given for casual labor. It seems to us that reasonable assumption would be to the same effect. This company had firm commitments to furnish large quantities of gas upon demand. Obviously the compressor stations must be in readiness to meet those obligations. Such readiness must require a certain amount of labor on the job. All labor pay, all maintenance, and all consumption of supplies could not possibly cease just because no gas was actually being pumped for a period, so long as such large firm obligations were outstanding.

In its order the Commission finds, "Mississippi's president, chief accountant and other allocation witnesses all testified that the compressor station costs shown above are approximately proportional to the volume of gas compressed." 63 PUR NS at p. 103.

The statement is hardly candid or objective. Mississippi's president and chief accountant were not "allocation witnesses"; they did not testify on the subject of allocation. There were three "allocation witnesses," i.e., witnesses who had made special studies of the allocation of costs and who testified directly on the matter. They were the witnesses French, Simonds and Miller.

The witness French was the member of the staff of the Commission and its senior rate investigator in the instant case to whom we have already referred. As we have seen, in his study of the allocation of costs of service, he assigned the entire cost of compressor station labor to "demand." The Commission rejected in toto the testimony of its own expert on this subject.

The witness Simonds was a consultant presented by the company, who had also made a study of allocation of costs. He allocated 75 per cent of compressor station labor to "demand" and 25 per cent to "commodity." He said that compressor station labor has frequently been considered chargeable wholly to "demand," because it continues regardless of the volume of gas handled, but that under the conditions of this petitioner's operations, referring to the amount of casual labor employed, he had allocated 25 per cent of the item to "commodity." The witness Miller was also presented by the company. He had made a study of the allocation of costs, and used without adjustment the allocation of compressor station labor made by the Commission witness French. This, as we have noted, was an allocation of the whole of the item to "demand."

The question, therefore, is whether the one wholly indirect reference of the witness Shuttleworth can be deemed to be substantial evidence, within the meaning of the rule, in support of a flat and unequivocal finding by the Commission that compressor station labor is directly proportional to the volume of gas sold and is, therefore, a "commodity" charge for allocation purposes under the demand-commodity formula. We do not think that it is. He was not testifying as to allocation of costs; three other witnesses testified directly as to proper allocation of costs, and two of them assigned all of this item to "demand" and the other assigned 75 per cent of it to "demand." The witness presented by the Commission staff itself was one of the former two.

[16] It seems to us that the fact that this labor cost varies in proportion to the volume of gas sold, or the fact that it is not so proportionate, is easily susceptible to precise demonstration. Complete data must be available to both the Commission and the company. An important item of fact cannot be sustained by wholly unsatisfactory generalities or by a twisted application of one bit of evidence not directed to the point, in the midst of a contrary concurrence of testimony by those who testified directly upon the subject. The Commission has wide discretion in the solution of problems such as this, but the solution must rest upon the facts. We repeat that the same rules as to substantial evidence and necessary findings apply to technical facts, difficult of ascertainment, as apply to ordinary facts easily found and easily understood. The facts must be found, the findings must

be supported by substantial evidence, and the conclusion must in turn be supported by the findings. The allocation of this compressor station labor is not so supported.

[17, 18] Petitioner next contends that the Commission's allocation of the annual charge for depreciation was arbitrary, contrary to the evidence, and unsupported by substantial evidence. The Commission assigned one-half of this annual charge to demand and the other half to commodity. In support of this treatment it said:

"The record does not support the company's claim that depreciation expense is not related in any manner to the volume of gas sales, and that this item should be considered a 'demand' charge. Mississippi is engaged in a wasting-asset business and it has stipulated that the depreciation rate reflects consideration of the associated natural gas reserves. In this case, functional rather than physical depreciation is controlling because the over-all quantity and output of the natural gas resource fixes the service life of the pipeline. It is evident that the volume of gas used by interruptible customers does contribute to functional depreciation. Here again it would be improper to allocate depreciation expense exclusively to the 'commodity' or 'demand' classification, and we concluded that it should be assigned equally to those categories." 63 PUR NS at p. 103.

It was stipulated before the Commission that the annual depreciation charge was on a straight-line basis and that the rate reflected the average service life of the plant "as measured by the gas reserves of the fields from which it now secures its natural gas supplies."

Annual depreciation charges on a straight-line basis are fixed by two factors, the cost of the depreciable property (less salvage) and its service life in years. The charge is merely the mathematical quotient of the former divided by the latter. It does not vary with the quantity of gas sold or transmitted. The service life of the plant may be fixed by the life of the gas reserves, and thus the total volume of gas to be transmitted during the entire venture, divided by the estimated annual rate of transmission, determines the number of years over which the cost of plant is to be spread. But the total depreciation to be taken is the total cost of plant, less salvage; it is a constant; it does not vary with the annual volume of gas sold. When the years of life have been estimated, the annual charge becomes a constant. It does not vary with the volume of gas sold annually. It is not a commodity cost, as that term is defined by the Commission. The only relationship between volume of gas and straight-line depreciation is the wholly indirect one that the volume of gas measured in years of supply fixes a maximum life for the plant. Moreover, although there are many divergent views as to the nature of depreciation, from the standpoint of the expense accounts the annual depreciation provision from income is universally regarded as, and in fact undoubtedly is, a return to the investor of the cost of plant. Thus viewed, it is not only *related to* cost of capacity, but in sum total it *is* the cost of capacity; so it would seem to be the purest of demand charges.

In the Canadian River Gas Com-

pany Case, *supra,* the Commission treated depreciation on various equipment in different ways. Transmission depreciation, except on compressor station equipment, was treated as a capacity, or demand, cost. In that case the Commission adopted the allocation studies of its staff.

In the present case the Commission has rejected the depreciation allocation study of its staff. We are not supplied with any clear idea as to why or how the Commission, rejecting the expert evidence before it, simply divided the whole depreciation charge into halves and allocated one half to demand and the other half to commodity. No finding of fact supports the conclusion. We are supplied with no data with which to test its validity.

The Commission says that "functional rather than physical depreciation is controlling," but no finding of fact is offered as a premise to that conclusion, and we are directed to no evidence which would serve as a premise. Functional depreciation, as the term is usually understood, means that caused by inadequacy or obsolescence.[18] In the present case, if the life of the gas reserves is less than the normal physical life of the plant, then obsolescence would seem to fix the limit of its service life. But that would hardly seem true as to all items of equipment, and we have no findings of fact by which to test the validity of the statement. Depreciation is an important item of cost, and an allowance of a correct amount is a right of the company. Upon remand the Commission is instructed to make findings of fact which will support whatever allocation of this item it proposes.

[19] Petitioner next complains that the Commission rejected all evidence of record in allocating supervision and engineering costs. All witnesses on the subject assigned it to demand. The Commission divided it, assigning $21,738 to demand and $46,206 to commodity. It said that these costs "have been prorated on the basis of the supervised expenditures of the respective groups, and this is equitable." The record, so far as it is cited to us in any of the briefs, is barren of evidence upon the item, except for the mere entry to demand in the exhibits. It appears that the difference between the allocation of the witnesses and the allocation of the Commission is the difference between assigning supervision and engineering to plant and assigning it to expenditures which are supervised. Such a difference would rest upon a difference of fact, and if in fact the costs were incurred for the purpose of supervising expenditures, we see no reason why the Commission's choice of the controlling principle is not correct. But if, as a matter of fact, the cost is a fixed cost related only to the plant itself, it would not seem to have commodity characteristics. The facts as to the true nature of the item are easily ascertained and should be found.

[20] Petitioner complains of the Commission's allocation of general and administrative costs upon the basis of supervised expenditures, exclusive of gas purchased. This seems to be a reasonable principle and within the discretion of the Commis-

[18] E.g., Re Chesapeake & P. Teleph. Co. (Md) PUR1916C 925; Re New Haven Water Co. (Conn 1943) 49 PUR NS 229; Guaranty Trust Co. v. Grand Rapids, G. H. & M. R. Co. (1931) 7 F Supp 511, 521; Central R. Co. of New Jersey v. Martin (1939) 30 F Supp 41, 60; Standard Handbook for Electrical Engineers (5th ed. 1933) §§ 13–50.

sion. The same principle was used by the Commission staff in its testimony.

Petitioner complains of the Commission's allocation of taxes other than Federal income taxes, half to demand and half to commodity. The Commission says only that "property taxes" are treated consistently and similarly to income taxes. The major part of these taxes ($210,971.28 out of $302,321.38, according to the exhibit of the Commission's staff) are property taxes. The balance is composed of capital stock, unemployment compensation, old-age benefit, franchise, power, state income and city license taxes. The Commission staff allocated all of them to demand, except capital stock and state income, which it divided equally. The company witnesses allocated this entire item to demand. In the Canadian River Gas Company Case, *supra,* as we have seen, the Commission allocated all these taxes to demand, except that it divided the state income tax equally. We are unable to say, upon the basis of the brief reference to the item in the opinion of the Commission, whether its division of this entire item equally between demand and commodity, is or is not arbitrary. The findings are neither complete enough nor clear enough. Certainly, on general principles, property taxes would seem to be a fixed charge and directly related to the plant itself. We do not see how they could vary with volume of gas handled, and neither the evidence nor the opinion of the Commission supplies information to that effect. Property taxes are in no way similar in nature to income taxes, which depend upon profit and are thus a function of both demand and commodity, as the Commission properly found.

[21] Petitioner complains of the Commission's allocation of the rate of return, half to demand and half to commodity. This is an established treatment of this item. We have noted the explanation of it in the Canadian River Gas Company Case, *supra.* It was the method used by the staff witness in the present case. The Commission points out that return is a capital cost and that the investment of capital serves both demand and commodity purposes throughout the year. Partaking of the elements of both, the division is made. The company says that the return is determined by a percentage of the rate base, which is property, and is proportional to the property and not to the volume of sales. Thus, says the company, it falls squarely within the definition of a demand cost and without that of a commodity cost. We think that the basis for the Commission's allocation of this item is clear and complete, both from past history and on the present record, and was within its discretion. The return earned is a function of the volume of sales as well as of demand.

[22] In conclusion upon the matter of allocation of costs, we repeat that the statute imposes upon us certain functions of review of Commission orders. The Supreme Court has prescribed guides for our action in that review. It has repeatedly emphasized, as it said in Colorado-Wyoming Gas Co. v. Federal Power Commission,[19] that the court must know what the findings are before it can give them the conclusive weight provided by the

[19] (1945) 324 US 626, 89 L ed 1235, 58 PUR NS 94, 65 S Ct 850.

statute. It has emphasized the necessity for adequate findings of the facts upon which the order rests. It has also held that the grounds upon which an administrative order must be judged are those upon which the record discloses that the action was based, and that where the decision of a Commission is explicitly based upon the applicability of certain principles, its validity must likewise be judged on that basis.[20] The court has held that it is our function to review the record for the substantial evidence said to support the findings.[21]

That the Commission might have adopted some other method or formula for determining the costs of the regulated business is beside the point. In so far as it purported to adopt the demand-commodity formula, our review must be upon that basis. The Commission cannot announce the applicability of a formula and then distort its application by failure to find accurately the factors required by the formula, or by departing from the essential progress of the formula from premise to conclusion. When the Commission announces principles or formulae as applicable, the validity of its order can be determined only by measuring what it does against the principles it announces. This is so not only upon the authority of Securities and Exchange Commission v. Chenery Corp.,[22] but because any other course would permit an administrative agency to announce a proper principle and, under that protection, achieve an improper result by unrevealed considerations wholly apart from the announcement. The prescribed judicial review would be set wholly at naught by any such procedure. In so far as the Commission purported to act upon its own informed judgment, apart from formulae or general principles, its findings and reasons must be clearly and completely shown.

The order of the Commission as to allocation of costs will be reversed and remanded with instructions that the Commission make clear the formula, or method, it uses in ascertaining the costs of the regulable sales, and that it make findings of the facts, based upon substantial evidence in the record, upon which it makes its allocations of compressor station labor, depreciation, supervision and engineering, and taxes other than Federal income taxes.

We have carefully examined each of petitioner's contentions in respect to the allowance of operating expenses. These relate to labor costs, past service pensions, contributions to customer companies, rate case expense, and Federal income taxes. The Commission has left open the possibility of adjustment in the last two items, in the event that the rate case expense exceeds the $70,000 estimated by it as the probable total, or that Federal income taxes be increased by adjustments by the Bureau of Internal Revenue. We find no error in respect to expense allowances.

We have also carefully examined petitioner's contentions in regard to the rate base, including working capital, but we find no error in these respects.

Petitioner urges the invalidity of that part of the order of the Commission which directs it to make effective in total amount whatever reduction of

[20] Securities and Exchange Commission v. Chenery Corp. (1943) 318 US 80, 87, 87 L ed 626, 47 PUR NS 15, 63 S Ct 454.

[21] National Labor Relations Board v. Donnelly Garment Co. 15 USL Week 4273 (March 3, 1947).

[22] *Supra* note 20.

its costs of gas purchased from The Interstate Natural Gas Company is finally approved by the courts upon review of the Commission's order in that case. We need not pass upon that point, as the Supreme Court as granted certiorari and heard argument in the Interstate Case,[23] and the rates of that company will shortly be fixed. Since the present case is remanded, that reduction, if any be proper, can be effectuated in such manner and amount as proves proper upon the reconsideration.

Affirmed in part, reversed in part, and case remanded for further proceedings in accordance with this opinion.

PRETTYMAN, J.: In its petition for rehearing the Commission presents one contention in a manner which makes an additional word advisable, lest the problem or the decision upon it be misunderstood.

[23–25] The subject is the allocation of costs, which is a process of ascertaining certain costs which pertain to the regulable business and which, therefore, must be included in the computation of the allowable rates to be charged consumers. The Commission says that a reviewing court is limited to a consideration of the "end result," the rate, or price, prescribed by the final rate order for the commodity or service. It says that when the court finds this rate to be fair and reasonable its function is exhausted. Upon that premise the Commission seems to contend that the court has no power to examine the composition of the prescribed rate or the several elements which together constitute the rate.

The danger of misunderstanding and confusion arises because the Commission's premise stems from a trite and true generality. It is true that if the rate prescribed by the Commission be fair, reasonable, and nonconfiscatory, a court cannot disturb it. The questions are: When is a rate fair, reasonable, and nonconfiscatory? And how does a court determine whether the rate is so or not? The Commission seems to contend that the court must examine the rate per se, as an abstraction, or as a naked economic fact, divorced from the elements of which it is composed and regardless of its effects; and if it appears fair and reasonable upon such examination, it must stand. Such contention is without merit, either upon reason or upon authority, and moreover is impossible of practice.

The character of a rate—fair, reasonable, and nonconfiscatory—as our law knows it, is not an abstract economic concept of the proper price to paid by consumers for a commodity or service. Our law has never provided that either a company, a Commission, or a court can fix a price for a utility commodity or service by an abstract observation or by a comparative evaluation of current prices for other commodities or services, or by any such process. The character of the rate has always been determined, in our law, by its relationship to the sum of a number of components. Those components, principally, are the expenses of the operation, an allowance for depreciation or depletion, and a proper "return" to the company. If the rate yields no more than the sum of these

[23] Interstate Nat. Gas Co. v. Federal Power Commission (1946) 65 PUR NS 1, 156 F2d 949, cert granted, 15 USL Week 3303 (Feb. 10, 1947), argued, 15 USL Week 3423 (May 2, 1947).

items, it is fair and reasonable. If it yields that sum, it is nonconfiscatory. So far as we know, there is no rate case in American reports in which the proper rate has not been determined by a determination of these components and then their combination into a total. And there is no reported court review which was not concerned with one or more of those components. Constitutional restrictions upon government control of public utility rates have been held by the courts to require this sort of process.[1]

The "end result" of a rate is not an intangible characteristic, nor is it the relative status of the rate as a price in the current economy. The "end result" is the ability of the rate to meet the sum of the costs required to conduct the operation in fairness to the consumer and to the company. The matter is nowhere better illustrated than in the opinion in which Mr. Justice Douglas announced the rule of the Supreme Court based upon "end result."[2] The "end result" of which he spoke was described by him in terms of expenses and capital costs. And even when he discussed "end result" in relation to the return to the company, which was the specific subject there under consideration, he spelled it out in terms of the required components of the return, i.e., an amount which will provide service on the debt and dividends on the stock, sufficient to assure confidence in the financial integrity of the enterprise, and to maintain its credit and to attract capital.

It follows from the foregoing that a court can review the fairness, reasonableness, and nonconfiscatory character of a rate only by reviewing the propriety of the elements of which the rate was composed. No other way is known to our law, or ever was followed by any authority so far as we know. No standard is available for use in any other process of review.

[26] When the court examined the "allocation of costs" in this case, it was examining the "end result" of the prescribed rate, because one phase of the "end result" is that the rate must yield enough revenue to meet all proper expenses. The contention of the Commission that a reviewing court has no power to inquire into a challenged refusal to include certain expenses in the computation of a prescribed rate, is without merit.

Not only do the foregoing general observations apply in the present case, but this allocation involves one of those difficult and delicate balances between Federal and state authority, and thus in a peculiar respect requires judicial scrutiny. The Federal statute, as was necessary, forbids Federal regulation of local intrastate rates. But, obviously, if the Federal Commission can arbitrarily refuse to allow in its regulated interstate rates the full and true costs of the interstate business, it can present the company with a dilemma. If the uncompensated interstate costs be imposed upon the local intrastate business, the Federal authority has, by indirection, control of those rates, even to the extent of making such business so expensive as to be prohibitive. If the uncompensated interstate costs be not imposed upon the intrastate business, obviously

[1] See Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 86 L ed 1037, 42 PUR NS 129, 62 S Ct 736.

[2] Federal Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 88 L ed 333, 51 PUR NS 193, 64 S Ct 281.

the fairness and reasonableness of the prescribed interstate rates are fictions.

[27] The Commission says that nowhere in its opinion did this court say that the resulting rates were unreasonable, unfair, or confiscatory. A rate order which does not provide for proper allowable expenses, taxes, depreciation and return, is unfair, unreasonable and confiscatory. We thought it unnecessary to recite that obvious basic premise.

The Commission also now attempts to translate the carefully stated conclusion of the Supreme Court upon the peculiar facts and concessions in the Panhandle Eastern Case [3] into a general doctrine applicable to all cases. The Commission says that that decision supports its position here, because the court there held that no formal allocation of costs was there necessary. That the opinion in that case was based upon facts, agreements, and concessions distinctly present in that record was meticulously stated by the court. The case at bar presents no such record or question.

[28] The Commission says, "The court, unlike the Commission, is not an expert body. . . ." Be that as it may, the Commission, even though expert, is forbidden to be arbitrary. And the courts are directed to prevent it from being so. The Commission cannot, and we do not understand it to claim that it can, shield arbitrariness by averments of its own infallibility, by technical expressions, or by failure to state adequate reasons for its conclusions. This court, in the present case, has not reversed the conclusions of the Commission, except in the procedural sense necessary to a remand. It has remanded the case for clarification where clarity is not present, and for completion where incompleteness now exists. When the findings and conclusions are complete and clear, the court will then, if appropriate proceedings are brought, consider whether the ultimate rulings of the Commission are within the permissible bounds of its power. The Commission says that the court has substituted its judgment for that of the Commission. The court has not done so. That contention in the present case is merely the recitation of a favorite cliche of administrative tribunals whose findings and conclusions have been queried by a court.

The other contentions of the Commission in its petition for rehearing were presented upon its predecision brief and argument. We have reëxamined them but are of opinion that the petition should be denied.

Denied.

[3] Panhandle Eastern Pipe Line Co. v. Federal Power Commission (1945) 324 US 635, 89 L ed 1241, 58 PUR NS 100, 65 S Ct 821.

MAINE PUBLIC UTILITIES COMMISSION

MAINE PUBLIC UTILITIES COMMISSION

Re Portland Gas Light Company

F. C. 1251
June 4, 1947

APPLICATION *for authority to add fuel cost adjustment provision to gas rate schedule; fuel clause disallowed.*

Rates, § 253 — Definiteness of schedules — Statutory requirements.

1. The statute requiring a utility to file a schedule showing "all rates, tolls and charges" contemplates a schedule from which the customer and the Commission can ascertain accurately and definitely the cost to the customer of a given service under definite service conditions, without reference to extraneous data solely in the possession of the utility, p. 156.

Rates, § 1 — Meaning of "rate."

2. The word "rate" means the amount which a customer must pay a utility for the service he receives, p. 156.

Rates, § 303 — Fuel adjustment clause — Legality of clause.

3. A rate schedule providing no fixed charges, but proposing that charges shall fluctuate and vary according to the cost of fuel, is not a schedule of "rates, tolls and charges" as contemplated and required by the statute requiring utilities to file a schedule showing all rates, tolls, and charges, p. 156.

Rates, § 303 — Fuel adjustment clause — Validity.

4. It is not in keeping with the objective of the statute governing rates to make it incumbent upon a utility customer, because of a fuel clause, to obtain voluminous data from the utility and to apply various formulae thereto in order to find out whether or not his bill has been correctly computed, p. 157.

Rates, § 303 — Reasonableness — Cost of fuel.

5. The cost of fuel, while a large element in the cost of gas service, is not the only factor to be considered in passing upon the reasonableness of gas rates, p. 157.

Rates, § 87 — Commission duty — Delegation of functions — Fuel clause.

6. The law imposes a duty upon the Commission to require fixed and definite rates in a gas rate schedule and the Commission has no legal authority to delegate its functions in this regard by permitting a fuel adjustment clause, p. 158.

APPEARANCES: William S. Linnell, Portland, for Portland Gas Light Company; John D. Leddy, for National Biscuit Company.

By the COMMISSION: Portland Gas Light Company, a corporation operating a gas plant in the city of Portland, Maine, and vicinity, is a pub-

lic utility within the meaning of Chap 40 of the Revised Statutes, and as such, is amenable to the jurisdiction of this Commission. On January 16, 1947, it filed with this Commission Class A, Sheet No. 13, amended, to its rate schedule M.P.U.C. No. 8, proposing a fuel cost adjustment provision applicable to all rate schedules, to become effective February 15, 1947.

The Commission, after summary investigation, suspended the operation of the rate for a period of three months, by order dated January 30, 1947, and inasmuch as sufficient time did not exist prior to May 15, 1947, in which to hold a hearing and promulgate a decree, the rates were suspended, on April 30, 1947, for a further period of three months, unless otherwise ordered. On the same date it was ordered that a public hearing be held at the offices of the Public Utilities Commission, State House, in Augusta, on May 15, 1947, at 10 o'clock in the forenoon, daylight saving time. Hearing was held accordingly. Notice was proved to have been given as ordered, and appearances were entered as above noted.

On April 29, 1942, this company filed with the Commission, an amendment to its rate schedule, consisting of fuel surcharge provisions substantially similar to those here under consideration, but limited to "the duration of the national emergency and ninety days thereafter." Such amendment was issued to become effective June 27, 1942.

Under the urgency of wartime conditions and in view of the fact that the amendment was of an emergency and temporary character, it was permitted to become effective under the applicable statutory provisions without a hearing being invoked by this Commission.

It is now proposed by Portland Gas Light Company that the above-mentioned fuel adjustment provisions, with slight alteration, be placed in effect as a normal and permanent feature of its rate schedule.

The proposed amendment currently before us, reads as follows:

"FUEL COST ADJUSTMENT

"Applicable to all Rate Schedules

"A fuel cost adjustment will apply to all bills rendered under any of the company's filed schedule of rates, subject to the following conditions:

"(a) Whenever the weighted average cost of boiler fuel plus generator fuel and water gas oil less credits for residual and steam sales for any consecutive three months' period exceeds 24 cents per thousand cubic feet of gas manufactured, then for each whole one cent of such excess a fuel cost adjustment at the rate of one cent per thousand cubic feet, computed to the nearest whole cent, shall apply to all bills rendered during the second billing month following such three months' period.

"(b) The costs of boiler fuel, generator fuel, and water gas oil and of residual and steam sale credits shall be determined in accordance with the Uniform System of Accounts as prescribed by the Maine Public Utilities Commission.

"(c) During the existence of this fuel cost adjustment the base rate to which it shall be applied under Industrial Rates G and L shall be that produced by the application of the oil

clause in said Rates, which shall remain at the levels attained on June 27, 1942."

This proposal presents to the Commission a question of fundamental importance involving the basic conception of our statutory duty with respect to the regulation of rates.

We are not unaware of the fact that the changing conditions incident to the war and its effects have given rise to somewhat widespread use of flexible fuel clauses in other jurisdictions and that in some states such arrangements have apparently met with Commission approval. Nevertheless, we think it incumbent upon us to reëxamine briefly, in the light of this proposal, our duty under the Maine statutes and judicial pronouncements.

[1–3] Under Rev Stats Chap 40, § 16, the rate, toll, or charge of a public utility must be "reasonable and just, taking into due consideration the fair value of all its property with a fair return thereon, its rights and plant as a going concern, business risk, and depreciation."

Section 34 of the same chapter expressly imposes upon the utility the burden of proof to show that any change in its rates is reasonable.

Section 26 requires every such utility to file with the Commission, schedules "which shall be open to public inspection, showing all rates, tolls, and charges which it has established and which are in force at the time for any service performed by it within the state."

Section 31 provides that "it shall be unlawful for any public utility to charge, demand, collect, or receive a greater or less *compensation*, . . . than is *specified* in such printed schedules . . . as may at the time be in force, or to demand, collect, or receive any rate, toll, or charge not *specified* in such schedules."

When the statute requires the utility to file a schedule showing "all rates, tolls, and charges," we think this contemplates a schedule from which the customer and the Commission can ascertain accurately and definitely the cost to the customer of a given service under definite service conditions without reference to extraneous data solely in the possession of the utility.

The word "rate" is defined by Webster to be the price or amount stated or fixed on anything. Raun v. Reynolds (1858) 11 Cal 14, 19.

Under the Interstate Commerce Act the word "rate" has been held to mean the net cost to the shipper of the transportation of his property,—that is the net amount the carrier receives from the shipper. Federal Gravel Co. v. Detroit & M. R. Co. (1930) 248 Mich 49, 226 NW 677; United States v. Chicago & A. R. Co. (1906) 148 Fed 646, 647.

We regard the word "rate" as meaning the amount which the customer must pay the utility for the service he receives. A schedule such as that filed in this case, providing no fixed charges, but proposing that such charges shall fluctuate and vary according to conditions, is not, in our opinion, a schedule of "rates, tolls and charges" as contemplated and required by § 26. It is, rather, a statement of a *method* of arriving at the rates.

It will furthermore be noted that in § 31 the word "compensation" is employed and it is required that same be

"specified." The section prohibits the collection of a greater or less compensation than is specified and prohibits the charging of any rate "not *specified* in such schedules."

It is apparent to us that one end which the legislature sought to accomplish by this explicit language, was to place upon the public record, the facts necessary to enable the customer to determine how much money he is required to pay for a given service.

[4] Under the proposed schedule a customer, upon consulting same, would have no knowledge of what he must pay for gas. He would be required, in order to verify the amount of his bill, not only to investigate the official rate schedule on file with this Commission, but also to ascertain the weighted average cost of fuel of several types to the gas company for the applicable three months' period, and also the "credits for residual and steam sales" for the same period. We do not think it in keeping with the objective of the act to make it incumbent upon such customer to obtain voluminous data from the company and to apply various formulae thereto in order to find out whether or not his bill has been correctly computed.

It is true that this Commission, under the statutes, would have full power to obtain from the company, from time to time, all required data involved in the upward or downward variations in the charges based upon the fuel clause, in order to ascertain whether or not such charges are just and reasonable and whether or not they have been correctly computed. This, however, would amount to a shifting of the burden of proof from the utility where it legally belongs, to the Commission where it does not belong.

[5] We apprehend that in ascertaining the reasonableness of rates, it is our duty to take into account all relevant factors. The proposed fuel clause is intended to bring about changes in rates or compensation upon the basis of one factor alone, namely, the cost of fuel. Notwithstanding the fact that the cost of fuel is a large element in the cost of gas service, we see no reason to exclude the consideration of other factors when a change is made in the cost of gas to the customer. Fuel cost may have increased during a certain period, yet it is conceivable that such increase may be wholly or in part offset by decreases in the cost of other items.

If this proposal is sound in principle, it would be equally sound for this or some other utility to make use of a similar clause with reference to labor costs, so that the rates would fluctuate in direct proportion with wage adjustments, or it might be applied to any one of numerous items of operating costs, or conceivably to all operating expenses in the aggregate. This would no doubt materially reduce the work of this Commission, but were such arrangements to be sanctioned, we doubt that we should be properly discharging our public duty.

This proposal, in effect, calls for a delegation of the public responsibility of this Commission to the utility. Although it is permissive in character and subject to recall, it is nevertheless effective. The utility would be making the automatic rate changes itself, upon its own determination, as to the fair cost of fuel. If this method were more

broadly applied as above suggested, it would be doing likewise as to the fair cost of labor and other operating expenses. Whether or not fair prices are paid for fuel would, in effect, be determined not by this Commission but by the utility itself.

It may also be noted that the proposal tends to lessen the incentive for the utility to keep fuel costs at the lowest possible level.

[6] It appears to us that the public interest requires this Commission to resist proposals which would, in the future, tend to impair its effectiveness in the discharge of its public obligations. We think the law necessitates that we require fixed and definite rates in the schedule and that we have no legal authority to delegate our functions in this regard.

In the case of Re Caribou Water, Light & P. Co. (1922) 121 Me 426, PUR1923A 140, 117 Atl 579, the supreme judicial court of this state had before it the question of the propriety of a provision in a rate schedule not unlike this in principle. The rates, therein provided, called for specific sums to be paid annually by the town for public water service, plus the amount of taxes annually assessed by the town upon the property of the utility. Although the case involved some other features as well, it is none-the-less apparent from the opinion, that the court in holding such an arrangement invalid, adopted the view that the rates must be fixed and specific. Thus, at p. 431, of 121 Me, and p 145 of PUR1923A, the court said: "The determination of what are reasonable rates under the act creating the Public Utilities Commission in this state contemplates, we think, certain and definite rates, and not rates which may fluctuate from year to year by reason of the acts of some other body, as in this case the town and its board of assessors." With further reference to the same point, the court says [same pages]: "It may be a practical and effective way of restraining what we have no doubt is a natural tendency of municipal officials of meeting increased municipal rates by increased valuation of the utility's property, a practice which, while it should be condemned, *may not be legally circumvented by any automatic arrangement of elastic rates which contract and expand with the valuation and tax rate.*"

If such an "arrangement" cannot legally be made with respect to expenses for taxes, we know of no reason by which we should be warranted in sanctioning the application of the identical principle to fuel costs, through the means of "elastic rates which contract and expand" therewith.

If public utility rates cannot properly be made to fluctuate upon the basis of acts of public bodies such as a town and board of assessors, a fortiori such changes cannot be regarded as permissible when based upon the acts of the utility itself.

Since the Commission takes the view herein expressed, we have no occasion presently to consider the financial data submitted in evidence.

If, however, Portland Gas Light Company wishes to file a new schedule of rates, definite in its application, which it considers necessary to provide a fair net return on its investment, the Commission will consider the case upon its merits and issue such decree as may appear to be warranted.

To make an order relative to the fuel clauses contained under Rates G and L in the existing schedule would appear to be beyond the scope of the present proceeding, although the Commission could raise the question of their propriety on a complaint instituted upon its own motion. This, we trust, will not be necessary, as we invite the company to revise said Rates G and L in conformity with the views set forth in this decree, and likewise to eliminate the temporary fuel surcharge provided for in Class A, Sheet No. 13, original, of its schedule M.P.U.C. No. 8.

If the company's fuel costs are subject to such a degree of fluctuation as to make it necessary, it may establish for quarterly periods, specific fuel surcharges, each filing to be accompanied by the data upon which such surcharges are based, and same may be made effective upon fifteen days' notice, unless the Commission should, in any instance, find cause to suspend same and order a hearing thereon.

FEDERAL POWER COMMISSION

Re R. J. Whelan et al.

Docket No. G-899
May 20, 1947

APPLICATION *by partnership for determination that it is not a natural gas company under Natural Gas Act; granted.*

Gas, § 2.1 — Jurisdiction of Federal Power Commission — Production and gathering of gas.

A partnership proposing to engage solely in the production and gathering of natural gas and its sale to a transmission corporation, after dehydration in a plant to be constructed by the partnership, would not be operating as a natural gas company within the meaning of the Natural Gas Act and would not be subject to the orders, rules, and regulations of the Commission applicable solely to natural gas companies, where there is no affiliation between the partnership and any person engaged in natural gas production, gathering, or transmission operations, the contract with the transmission company will be an arm's-length transaction, and the partnership will not be engaged in transporting natural gas in interstate commerce.

By the COMMISSION: Upon consideration of the application filed May 19, 1947, by R. J. and D. E. Whelan, a partnership, for a determination that

it is not a natural gas company under the Natural Gas Act and that the partnership's proposed operations will not be subject to the jurisdiction of the Commission:

It appears to the Commission that: (1) The partnership proposes to engage solely in the production and gathering of natural gas in the Whelan field, Harrison county, Texas, and the sale of the natural gas so produced and gathered to Texas Eastern Transmission Corporation (Texas Eastern) after dehydration in a plant to be constructed by the partnership at or near the point of delivery to the latter company. For the purpose of making such sale, the partnership will construct its own gathering lines connecting its wells with the main transmission line of Texas Eastern, at which point the gas will be metered and sold; (2) There is no present affiliation, direct or indirect, between the partnership and any person engaged in natural gas production, gathering or transmission operations, and the contemplated contract between the partnership and Texas Eastern will be an "arm's-length transaction"; (3) The partnership will not be engaged in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, in the delivery of natural gas to Texas Eastern under the proposed contract;

Upon the facts presented in the application, the Commission therefore finds that: In its proposed operations the partnership of R. J. and D. E. Whelan will not be a "natural gas company" and will not be subject to the orders, rules, and regulations of this Commission applicable solely to natural gas companies as defined in the Natural Gas Act.

Industrial Progress

A digest of information on new construction by privately managed utilities; similar information relating to government owned utilities; news concerning products, supplies and services offered by manufacturers; also notices of changes in personnel.

Washington Water Power Plans Five-year Program

WASHINGTON WATER POWER COMPANY probably will spend about $3,000,000 a year for the next five years on construction in Washington and Idaho, J. E. E. Royer, vice president, has announced.

The company early this year had outlined a near $3,000,000 construction program for its territory in Washington and Idaho. That 1947 figure is now about $3,500,000. This construction program is about 60 per cent complete. A major item of expense under this year's program has been the rebuilding of the distribution system to increase capacity at a cost of about $1,000,000.

Of the five-year program, nearly half, or $7,000,000, is earmarked for Spokane. About $3,700,000 will be used for improvements in the transmission and distribution system, $1,750,000 for substations and substation improvements, $650,000 for street lighting modernization, and $800,000 for general improvements of service buildings and other miscellaneous items.

Gas Range and Automatic Water Heater Shipments Show Gain

DESPITE continuing steel shortages, the Gas Appliance Manufacturers Association reports that gas ranges produced and shipped during the first six months of 1947 totalled 1,166,000 units, an increase of 40.6 per cent over the 829,300 units shipped during the corresponding period in 1946.

Automatic gas water heater shipments for the first six months of 1947 reached an all-time high of 937,700 units, representing an increase of 74.8 per cent over the same period of 1946.

Type H Stirling Boiler

A NEW bulletin has been announced by The Babcock & Wilcox Company describing the Type H Stirling Boiler. This boiler is a relatively small, water-tube unit, designed primarily for installation where headroom is limited. It is said to be particularly suitable for smaller central stations, for industrial power plants, for process steam requirements, and for heating purposes.

The bulletin describes this boiler completely, cites several typical installations, and includes dimensional data for the various sizes and capacities of the unit.

Robins Booklet Describes Car Shakeout

THE ROBINS CONVEYORS DIVISION of Hewitt-Robins Inc. has issued a new bulletin completely describing and illustrating the Robins Car Shakeout. Bulletin No. 128-A not only presents the statements of the manufacturer—that the Robins Car Shakeout unloads hopper-bottom cars in only a few minutes, with only two men, without any manual labor, even with frozen material—but offers substantiating evidence in the form of reports from owners of the equipment relating their savings in unloading such substances as coal, petroleum, coke, limestone, ore, and other bulk materials, even when they are frozen.

Copies of the bulletin are available from the manufacturer, 270 Passaic avenue, Passaic, New Jersey.

New American Standards Listing Available

AN entire new listing of its 874 standards is now available free of charge at the American Standards Association and may be obtained from their office, 70 East 45th street, New York 17, New York, P. G. Agnew, vice president of the American Standards Association announced recently.

The new listing of American Standards includes prices which are revised slightly upward, because of increased production cost, Dr. Agnew said.

A number of additional revised standards approved since the January 1947 issue of all American Standards are included.

Lighting Exhibit and Forums Postponed Until March

THE board of directors of the Fluorescent Lighting Association has decided to postpone the Exhibit and Forums which were scheduled for October 7th, 8th, and 9th until March, 1948.

This postponement will make available more adequate hotel facilities. It will also avoid conflict with the several other lighting meetings scheduled for this fall.

G-E Appointment

W. S. GINN has been appointed assistant manager sales in General Electric's power transformer section, transformer division, it was announced by H. F. McRell, manager of the company's transformer division.

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design, and construction. » » »

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